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Who benefits?

Comparing public and private interest explanations of professions regulation public policy

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Who benefits? Comparing public and private interest explanations of professions regulation public policy

Chris O'Leary
PhD Public Policy
2015

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Abstract

What motivates actors as they engage in the professions regulation policy process? Are they motivated to serve their own, selfish interests or the wider, public interests? This key question has been at the heart of policy and academic debate since the first independent regulatory body, the General Medical Council, was established by Parliament in 1858. It is a debate that has affected changes in the professions meta-regulatory framework as well as the regulatory regimes affecting many different professions, aspiring professions and occupational groups. In this thesis, I compare public and private interest explanations of the policy process around professions regulation in the UK. I have explored this question by examining five very different professions – architects, hearing aid dispensers, pharmacists, psychotherapists and teachers - and their relevant regulators as they managed changes in their regulatory regimes. I explored the observable expectations arising from two private interest models, bureau-shaping and rent seeking, as they applied to the motivations of regulators and professional bodies respectively. I also explored public service motivation theory, a theory has seen much academic interest in recent years, particularly in the public administration field. I examined these theories with respect to three key non-political interest groups: regulators, professions and the public. Overall, my research suggests, on balance, private interest theories provide a more convincing explanation of the motivations of regulators and professional bodies as they engaged in these regulation policy developments. But there were differences, over time and between regulators and profession bodies, as to whether private or public interest motivations were more dominant or evident. There was evidence that public interests also motivated these actors. I also draw a number of conclusions about the theoretical validity of both rent seeking and public service motivation theories.

List of abbreviations

ARB	Architects Registration Board
ARCUK	Architects Registration Council of the United Kingdom (predecessor to the ARB)
BACP	British Association for Counselling and Psychotherapy
BSHAA	British Society of Hearing Aid Audiologists
CPSM	Council of Professions Supplementary to Medicine (predecessor to the HCPC)
DfE	Department for Education
DH	Department of Health
GMC	General Medical Council
GPC	General Pharmaceutical Council
GTC	General Teaching Council (non-statutory predecessor to GTCE)
GTCE	General Teaching Council of England
HAC	Hearing Aid Council (predecessor to the HCPC with respect to the regulation of hearing aid dispensers)
HCPC	Health and Care Professions Council
HMT	Her Majesty's Treasury
HPC	Health Professions Council (previous name of the HCPC)
PSM	Public service motivation
RIBA	Royal Institute of British Architects
RPSGB	Royal Pharmaceutical Society of Great Britain (predecessor of the RPS)
RCT	Rational choice theory
RPS	Royal Pharmaceutical Society
UKCP	United Kingdom Council for Psychotherapy

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Preface

“Whereas it is expedient that persons requiring medical aid should be enabled to distinguish qualified from unqualified practitioners.....”

Preamble to the Medical Act of 1858

On 23rd November 1858, Sir Benjamin Brodie presided over the first meeting of the General Medical Council (then formerly known as the General Medical Education and Registration Council of the UK). The Council had been established under the Medical Act of 1858, which finally received Royal Assent in August of that year. Campaigns to establish medical registers had been fought at various times in the century before the 1858 Act was finally passed: for example, in 1808 a Bill before Parliament called for the establishment of medical registers and was generally known as Dr Harrison’s Bill (Bishop and Gelbeir, 2002; p629). During the 1840s and 1850s, medical reform was high on the political agenda, and some seventeen bills were presented to Parliament before the Medical Act was finally passed.

The establishment of the General Medical Council was not only an ‘epoch-making milestone in the history of medical education and practice’ (Finch, 1958; p321) but arguably the beginning of modern state regulation of professions (Moran and Wood, 1993; p17). Historians have longer debated the significance of these reforms and their place in a wider debate around the professions (Roberts, 2009). In public policy terms, the Parliamentary and wider debates that led to its establishment identified a key tension that permeates policy and academic discussions to this day; the extent to which state regulation furthers public or private interests. In terms of the public interest, debate in the lead up to the establishment of the General Medical Council focused on the need to protect the public from unqualified practitioners, of which it was estimated there were some five thousand in the 1841 census and as illustrated by the Preamble to the Medical Act. Those opposed to the provisions when before Parliament highlighted the private interests that would be served by the legislation. Adam Black, the Member of Parliament for Edinburgh, stated in the second reading of the bill that in his opinion:

“....all Acts hitherto passed which had given a monopoly to the body of physicians in London, and placed restrictions upon the other branches of the profession.” (HC Deb 02 June 1858 vol 150 cc1406-21)

This debate about the public or private interests served by professions regulation can be seen at various times and in numerous debates around policy proposals. Academic debate also focused on public versus private interests as explanatory models of the motivations of those engaged in the professions regulation policy process. It is this debate that this thesis seeks to address. It does so by examining five very different professions that have each been involved in policy change around their regulation in recent years. Using qualitative and quantitative data analysis, and focusing on three sets of actors (the public, regulators and the professions themselves), this thesis seeks to compare public interest and private interest theories and identify which provides a more convincing explanation of the policy process with respect to these five professions. The thesis is structured as follows.

In the next chapter, I set out the concepts and context which frame this research. It includes discussion of the concept of the professions, and the relationship between profession, professionalism and professionalisation. I also set out a definition of professions regulation and an overview of the different forms this can take. There are a number of meta-regulation issues that are important here, including the impact of exogenous shocks such as the Shipman inquiries and the Mid-Staffs scandal that are important to the situating of profession-specific policy proposals and changes. There is also policy intent at the meta-level, and the contrast between the intentions of the 1979 to 1997 Conservative governments, the Labour governments of 1997 to 2010 and the current Coalition Government are discussed, as is the role of the European Union and particularly the implications of Article 7 of the Treaty of Rome (free movement of labour) and the various directives aimed at establishing mutual recognition of professional qualifications across all member states.

In chapters 2 and 3, I set out the theory and method underpinning this research. I introduce the concepts of public interest and private (or self) interest in relation to professions regulation and the underlying causal mechanisms implicit in these theories. I justify the cases covered by this research and the methods adopted.

In chapter 4, I give a narrative of the development of each of the five case study professions and their regulation experience. I identify the key differences between these cases and review the policy change that has led to their inclusion in this research.

In chapter 5, I seek to address the core research question by examining the extent to which public interest or private interests explain the actions of regulators. I set out how public and private interest causal mechanisms might operate. In particular, I examine the extent to which Patrick Dunleavy's bureau-shaping theory (1991) explains regulatory change compared to public interest justifications inherent in the public service motivation model with regards to the five case study professions.

In chapter 6, I examine public versus private explanations of the roles of professions in the policy process. In particular, I consider rent seeking as a core private interest explanation. In chapter 7, I consider the expectations of the 'public' in the professions regulation policy process. The public play a significant role in both public and private interest theories. In private interest models, it is assumed that collective action problems prevent the public from articulating their interests, enabling other key actors to use the professions regulation policy process to their own advantage. In public interest models, civil servants, politicians and professions are motivated by the public interest, but how the public articulate these interests, or how the public provide feedback and how this is responded to, is largely ignored by such models. In this chapter, I ask, I ask a sample of n=187 students and staff at King's College, London what motivates regulators and professional bodies/trades unions in the policy process. This sample is in no way intended to be representative of the general public, but does provide some interesting insights from a group of individuals who are not involved directly in the regulation or professional representation of my five case study professions. Finally, in chapter 8, I draw together the findings from the analysis of regulators, professions and the public and seek to identify whether the public and private interest theories are the most convincing and complete explanation of policy change. I draw conclusions, both in terms of theory and empirical testing, about the three models that are at the centre of my research.

1 Concepts and context

1.1 Introduction

Professions regulation is not a 'one size fits all' policy instrument. There are a number of forms of professions regulation that have developed over time and are affected by a number of exogenous and endogenous factors. Nor is the concept of profession one for which there is a single, generally agreed definition. In this chapter, I will conceptualise the professions and professions regulation. I will set out the forms in which professions regulation manifests in the UK, and the factors that influence these forms. I will finally provide a narrative of the key developments in professions regulation over the past thirty years or so, a period in which there has been substantive change in the number of professions, number of people working within the professions and the forms of professions regulation.

1.2 Conceptualising the professions

A first important step in framing this research is to understand what is meant by the term 'profession'. This is not an easy task. Indeed, several academics argue that defining the concept of professions is a 'sterile exercise' (Saks, 2014; p1) while others argue that any definitions reflect essentially Western constructs. In his seminal study of the medical profession in the United States, professions sociologist Eliot Freidson (1970) identified the difficult task of defining the concept of profession because each professional group was uniquely different. Such was the difficulty of the task that, even today, there is no agreed single definition of what constitutes a profession (Modarresi, Newman and Abolafia, 2001; p1) and there have been competing efforts to conceptualise the professions. Greenwood (1957) attempted to identify the main attributes of a profession as systematic theory, community sanction, authority, an ethical code and a professional culture. Others have attempted to widen this definition, and have focused on the extent of economic and political power exercised through status and the privileges afforded to professions (Freidson, 1986; p108). While sociologists have made numerous attempts to define the concept of professions, there are almost no definitions rooted in the political science or economics domains. Savage (1994; p129) suggests that there is no economic theory

of the professions as an economic institution; rather that economists focus either on individual professions or on forms of market restrictions associated with professions regulation. She goes on to define professions as 'a network of strategic alliances across ownership boundaries among practitioners who share a core competence' (p131). While she goes on to explain several of the concepts fundamental to her definition, it nevertheless is too broad and vague and could cover any number of non-professional activities.

Professionals themselves have also attempted to define what it means to be a 'profession'. Cruess, Johnston and Cruess (2003; p76), in discussing teacher education, suggest that a profession is:

*"An occupation whose core element is work based upon the mastery of a complex body of knowledge and skills. It is a vocation in which knowledge of some department of science or learning or the practice of an art founded upon it is **used in the service of others**."* (my emphasis added).

Three key issues arise from this definition. The first is the relationship between occupations and professions; namely, what is the difference between a plumber and a psychiatrist (for example) or between a carpenter and a chartered accountant? What makes it possible to speak of one as a professional while excluding the other? Brante (2010, as cited in Saks, 2012; p2) argues that there is little difference between car mechanics and doctors or lawyers, and that the difference between professions and occupations is therefore not simply one of knowledge and skills. Core to almost all definitions of professions is that of highly specialised, technical skills, generally arising from academic study. This alone, though, does not allow for a distinction between trades and professions. Many trades involve long periods of technical training, including both formal education and some work-based apprenticeship. What is needed is the link between specialisation and the third of our issues, which I would suggest is that of professional norms and, specially, the **service of others**. Many professional bodies include public service in their defining characteristics. In an oft quoted speech in a debate on the professions in the House of Lords, Lord Benson stated:

“Around eight years ago my profession set down what it believed were its obligations to the public. It is worth recounting them because they are the foundation on which all professions must be built and on which their futures depend.” (HL Deb 08 July 1992 vol 538 cc1198-234)

Of course, the concept of public service here is vague and raises a number of significant questions. What constitutes the public? Who decides what constitutes public service? How this norm is developed and maintained? Early definitions of the professions focused on selflessness as the defining professional norm. Harold Wilensky, one of the leading early sociologists to examine the professions, spoke of differences between trades and professions as being the degree to which practitioners adhere to a set of moral norms. He argued that this service-ideal of selflessness meant that professions could be identified by the extent to which they demonstrated a:

“...devotion to the client’s interests more than personal or commercial profit...”

(Wilensky, 1964; p140)

This definition of public service as putting clients before self still resonates today. In one of what is a large number of articles on the nature of professionalism in medicine, Tilburt (2014; p29) states that this:

“...requires that physicians uphold the best interests of patients while simultaneously insuring just use of health care resources.”

Tilburt’s definition goes further than simply putting clients before self, and includes reference to the wider public interest in the ‘just use of health care resources’. Indeed, contemporaries of Wilensky also spoke of a function of professions as having this wider public service ethos (Muzio, Brock and Suddaby, 2013; p701). More recently, Lord Benson, professional bodies and a number of academics have suggested that this norm involves selflessness to a wider group than simply the professional’s clients; here, the norm has expanded to the wider public. This difference of opinion around the scope of the public in the supposed public service

norm of professions belies a major issue in conceptualising the public interest, an issue that is addressed in chapter two of this thesis. It is also part of the major discussion, between public policy and public administration, within political economy, within sociology and the other academic fields that study the professions, around whether private or public interests are the key motivations of the professions. This substantive discussion is the focus of chapter two of this thesis.

Lord Benson then set out nine obligations that professions owed to the public. These are often referred to by professions regulators and professional bodies as defining characteristics of a profession, rather than the obligations of professions to the public. Benson's criteria are similar to those set out by Carr-Saunders and Wilson in the seminal book *The Professions*, first published in 1933. This work documented the development of twenty two professions in the UK. They set out five criteria: the foundation of a voluntary association; the exclusion of unqualified persons; a development of codes of conduct; a system of tests and examinations; and, finally, the control over relevant educational institutions. Similar criteria can be found in a number of policy documents and statements by professional bodies, including the UK Inter-Professional Group position statement on professional regulation, published in 2002. This stated that a profession must have:

“..a governing body which sets standards of education as a condition of entry and achievement of professional status and which sets ethical standards and professional rules which are to be observed by its members. These rules are designed for the benefit of the public and professionals in breach of such rules are subject to disciplinary action.” (UKIPG, 2002; p1)

It is worth noting that, using these definitions¹, medicine might not be considered to be a profession in the UK. There is no single professional body that covers the whole of the medical profession, which rather is divided into a number of discipline-specific medical colleges. The British Medical Association, the only profession-wide organisation, founded in 1832 in Worcester, does not set standards or codes of

¹ There are other definitions, including Marxist which, invariably, define professions in relation to capitalism and the state's furthering of capitalist interests. Such definitions are not discussed here as they focus on structural conceptions of human political action.

conduct or 'directs the behaviour of its members' (as Benson requires). The General Medical Council, as mentioned earlier, was founded in 1858 as a professions regulator, and is not a professional body.

1.3 Professions, professionalism and professionalisation

In his speech, Lord Benson also noted that:

"It is one thing to define the obligations, it is another to see that they are observed. It is an unending battle.....There will never be perfection but the striving is there." (HL Deb 08 July 1992 vol 538 cc1198-234)

Here, Benson suggests that being a profession is not a once and for all position. Rather, he suggests the fluid relationship between being an occupation and a profession and the changing nature of professionalism; a process commonly referred to as professionalisation (Neal and Morgan, 2000; p9). This process was first defined by Eliot Freidson and operates at two distinct levels: it is the process by which an individual becomes a professional and the process by which an occupation becomes a profession. Later writers, such as Khalili et al (2014; p92) have separately identified these two forms as professional socialisation (individual-level) and professionalisation (occupational group level). Professionalisation is thus the process by which occupational groups secure and protect exclusive areas of knowledge, skills and expertise (Khalili et al, 2014; p93), a 'knowledge monopoly' (Leigh, 2014; p627) and thereby establish professional autonomy (Freidson, 1970). The public versus private interest debate is often reflected in definitions of professionalisation. Carpenter, for example, draws on the work of Larson (1997), Weist (1983) and Abel (1986) to define professionalisation as 'the organised effort of an occupational group to pursue higher economic and social status and the right to determine conditions of occupational practice' (Carpenter, 2008; p341). Others have identified that occupation groups will often claim responsibility for the provision of some public good or to the profession's contribution to the public interest.

Freidson was the first in a substantive socio-historical body of work that sought to trace the stages through which an occupation becomes a profession. Carr-Saunders and Wilson (1933) were the first to utilise such an approach, but Caplow (1954), Hughes (1958) and Wilensky (1964) all used similar methods. Wilensky's work included empirical analysis of eighteen occupations in the USA, though which he asserted a typical pathway taken as occupations transformed into professions (Wilensky, 1964; p145-146)(Neal and Morgan, 2000; p11).

Much of this work is focused on Anglo-Saxon countries, particularly the UK and the USA. Freidson (1986; p202) suggests that there is a distinct process of professionalisation in these two countries, whereby each profession develops its own campaign for recognition and state regulation, which in turn creates professional distinctiveness and exclusive membership, a process which the sociologist Frank Parkin refers to as 'social closure' (Parkin, 1979). . Abel (1979, as cited in Carpenter, 2008; p341) identifies that the process involves differentiation and standardisation of services, arguing that they alone are competent to provide the services, establishing conditions of entry and practice and state protection for entry to the market for individuals who do not meet the entry requirements. It should be obvious that the achievement of these conditions and the subsequent market entry closure can be explained from both public and private interest theories.

Taken together, these provide a set of criteria against which it is possible to assess whether a group can be defined as a profession and also trace the professionalisation process for individual occupational groups. Such criteria are not without challenge and may reflect the functionalist sociology inherent in the works of Carr-Wilson and others. In the 1970s and 1980s, several emerging professional groups began to criticise the professionalisation process of monopoly closure and dominance (Evetts, 2003; p398). However, I would argue that they provide a useful means by which to measure the process of, and extent to which (a) professional groups differentiate themselves from non-professional groups and (b) professional groups establish their autonomy (Waddington, 1990; p689) and (c) closure of entry to the profession (Freidson, 1986).

For me, these assessments involve asking four questions, set out below:

1. Is there a voluntary body or bodies governing the occupation?
2. Are there rules governing the education and training required for membership of the occupational group?
3. Are there rules governing the conduct of members of the occupation?
4. Are there mechanisms to exclude unqualified persons from the occupational group?

I use these questions in my discussion of the method used in this research, and the latter is used in developing the five case studies set out in chapter 4. I should stress that these questions should not suggest that there is a single, linear process through which occupational groups become professions. Rather, they are presented as elements of the process of professionalisation. There is also a counter-process; that of deprofessionalisation. This is a much less researched area of professions and involves a loss of status, autonomy and power. It is an issue addressed in relation to community pharmacy in the case study set out in chapter four of this thesis.

If professionalisation is the process by which an occupational group becomes a profession, then professional socialisation (the process by which an individual becomes a member of a profession) is key to understanding the concept of professionalism. Professionalism is a further 'fuzzy', contested and ill-defined concept in the academic examination of the professions. It can be understood both as values and behaviours (Aguilar et al, 2012; p209) and has been described as a 'model of technical rationality' by Schon (1983, as cited in Noordegraaf, 2007; p765). There are a plethora of peer-reviewed articles by medical educators on the importance of professionalism, many of which start by explaining that professionalism is difficult to define, impossible to understand where it comes from or how it is taught but is nevertheless vital to the role of doctors. A recent global Lancet Commission on the future of medical education argues that professionalism 'should promote quality, embrace teamwork, uphold a strong service ethic, and be centred around the interests of patients and populations' (Frenk et al, 2010; p43) but does not actually define what is meant by professionalism. Some definitions – including Marxist, such as Saks (2012; p4) and rational choice models of rent seeking - focus

on the process of attaining formal legal regulation. Indeed, with the exception of a few sociology pieces, most academic interest in professionalism is to be found in professional education, and disproportionately in the fields of medicine, dentistry, nursing and pharmacy.

1.4 Professions regulation

There are over eighty professions regulated in law in the UK (UKNCP, 2011). Some groups are separately regulated in each of the home countries in the UK, while others are unregulated in at least one of the home countries. There are a number of different forms of regulation, and these forms are changing and evolving over time. I discuss these different forms in the next section of this chapter.

There is no single estimate of the number of people covered by statutory regulation of the professions in the UK. Humphries (2011, quoted in Forth et al, 2011; p43) use data from the Labour Force Survey to estimate that at least 13.5 per cent of the non-managerial workforce are covered by some form of statutory regulation. She recognises that this probably under-estimates the proportion of the workforce that are engaged in the professions. To illustrate the potential scale of regulated professions in the UK, just in relation to healthcare, there are nine separate regulatory bodies covering thirty three different occupations and 1.2 million individuals (CHRE, 2010).

There is a general agreement in the literature that the number of people affected by professions regulation, the nature and scope of regulation is increasing in the UK and across the developed world (Kleiner and Kudrle, 2000; 547) (Parker and Nielsen, 2009; 46)(Garoupa, 2011; p453). Such is the scale of this development that many academics have coined the term 'regulatory state' (Majone, 1996) or, more widely and more critically, 'regulated capitalism' (Maggetti, 2010; p2). However, it must also be stressed that there have also been increases in the working population and in the proportion of the working population engaged in the professions. This increase in professions within the workforce reflects structural changes in the economies of the developed world (Kleiner, 2013), including here in the UK (Forth et

al, 2011; p41). They may also be understood in the context of ‘regulation for competition’ (Levi-Faur, 2011), involving a move from self-regulation to more active intervention by governments to promote competition within and between professions.

The diagrams below illustrate this change over the last twelve years. I have compiled these data from the annual Labour Force Surveys published by the Office of National Statistics.

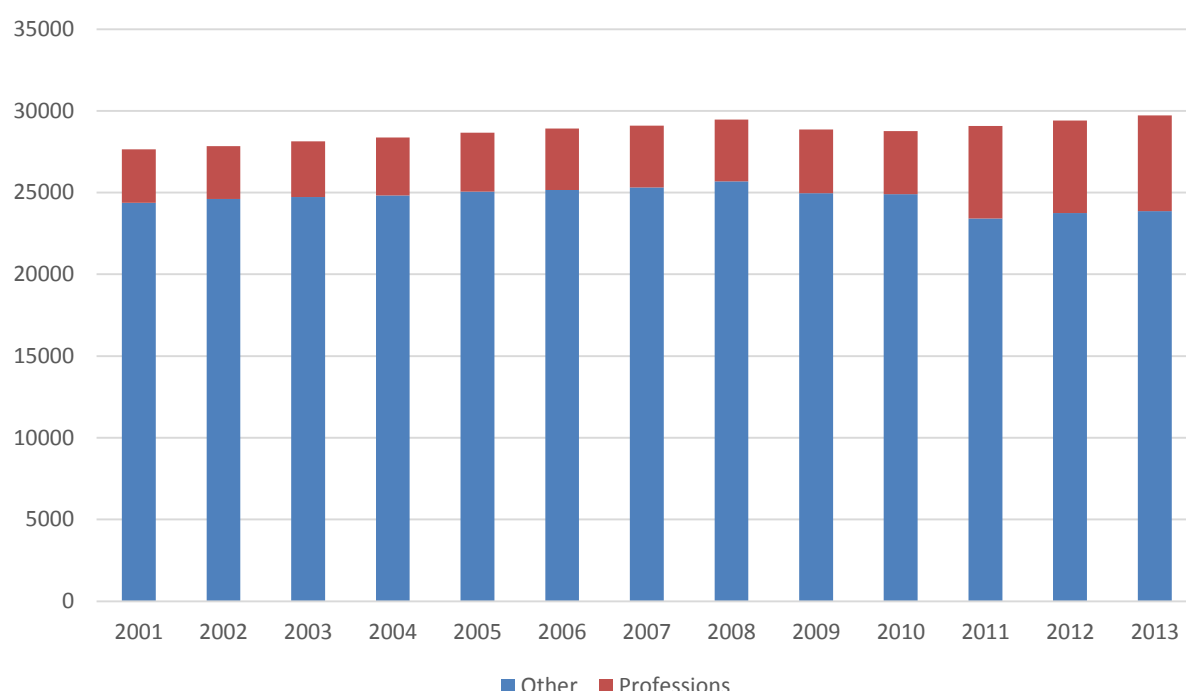


Figure 1: Changes in UK workforce and professional occupations, 2001 to 2013

The Labour Force Survey has been conducted on a regular basis since 1971 by the Office of National Statistics. The survey provides estimates of the total number of working age people in paid work (whether employed or self-employed), in training or undertaking unpaid work (such as volunteering or childcare).

Forth et al (2011), in the largest ever study of occupational regulation in the UK, used the Labour Force Survey data to estimate the extent and impact of occupational regulation. The following two tables present key data from this study.

Year	Licensing	Certification	Registration	Accreditation	Unregulated	Total	Base
2001	12	2	2	7	77	100	194,246
2002	12	2	2	8	76	100	256,066
2003	13	2	2	8	76	100	246,129
2004	13	2	2	8	76	100	238,278
2005	13	2	2	9	74	100	234,886
2006	14	2	2	10	73	100	229,230
2007	13	2	2	10	72	100	228,249
2008	14	2	2	10	72	100	224,196
2009	14	3	2	10	72	100	211,034
2010	14	3	2	10	72	100	152,191

Table 1: Regulation status by year, 2001-2010 (Forth et al, 2011; p79)(data rounded in original)

Table 1 above presents lower band estimates by Forth et al of the extent of different forms of occupational regulation by year. Forth et al distinguish between state enforced, mandatory types of occupational regulation (licensing and registration), state enforced, voluntary schemes (certification) and regimes that are voluntary and sector-led (accreditation). The lower band estimates presented by Forth et al include occupations where the whole of the occupation is covered by the regulatory scheme (and does not include jobs where only part of the work is covered by a scheme).

Table 2 overleaf presents data by occupation group, for 2010, of the different types of regulatory regimes identified by Forth et al. Because of methodological issues around undertaking cross-sectional analysis of the Labour Force Survey data, Forth et al do not present changes over time in the extent of different regulatory regimes by occupational levels. It is interesting that *process, plant and machines operatives* form the largest group of licensed occupations, followed by *professional* and then *associated professionals and technical*. Taken across all regulatory regimes, professions are the most regulated, followed by process, plant and machine operatives. It is not clear from the data whether the licensing and accreditation arrangements for managers and senior officials apply because of their roles as

managers and senior officials or because they are professionals who hold management roles.

SOC	Licensing	Certification	Registration	Accreditation	Unregulated	Total	Base
Managers and senior officials	6	0	3	12	78	100	23,241
Professions	40	13	0	22	24	100	21,102
Assoc professions & technical	26	4	5	10	55	100	22,485
Admin and secretarial	0	0	4	3	94	100	17,147
Skilled trades	2	0	0	21	77	100	15,771
Personal service	0	0	0	2	98	100	13,831
Sales and customer service	0	0	0	0	100	100	11,027
Process, plant & machine	51	6	0	1	42	100	10,054
Elementary	0	0	0	7	93	100	17,533
All	14	3	2	10	72	100	152,191

Table 2: Regulation status in 2000 by SOC (2000) Major Group (Forth et al, 2011; p80)(data rounded in original)

There have been considerable changes in scope, sampling, regularity and methodology in the survey since it was introduced. In particular, there have been significant changes in how main occupations are classified within the survey, presenting significant issues to any attempt to estimate with any confidence changes in the size of professional occupations over time and in the proportion of the

workforce engaged in the professions. However, as a simple illustration of the size and nature of this change, in 1975 the data suggest some 24 million people were in employment in the UK, of some 56 million in total population (ONS, 2014); that is, around 43 per cent of the UK's population were in some form of employment in 1975. The Labour Force Survey data in the 1970s included a crude classification of occupation, with nineteen separate categories². Of these, three relate to professions, namely:

- II Professional and related supporting management and administration
- III Professional and related in education, welfare and health
- V Professional and related in science, technology and related fields

Taken together, these account for 1.65 million of the 24 million workforce in 1975, or just under seven percent of the total workforce. This compares to the estimated 17 per cent of the workforce described as being in professional occupations in the 2013 data.

It should be stressed that these data should be taken as indicative of the changing structure of the workforce (and the increase in the proportion of the workforce engaged in the professions relative to other occupations) and not as reliable estimates. There are several problems with the scope, sample and methodology employed over time that make more firm estimates challenging. There are also two significant issues with the current data. First, a definitional change in 2010 appears to have taken around half a million people from non-professional occupations into professional occupations. More importantly, the numbers do not seem to match other estimates of the size of individual professions, as illustrated in table 3 overleaf.

² Since 2001, the Labour Force Survey has used standard occupational codes that include some eighty specific professional occupation codes.

	Labour Force Survey 000s	Relevant regulator 000s	Difference %
Architects	58	34	71
Occupational therapists	39	33	18
Pharmacists	45	44	2
Physiotherapists	52	36	44
Podiatrists	15	13	15
Speech and Language Therapists	20	14	43

Table 3: Comparison – Labour Force Survey and relevant registers

Each of the above professions is regulated in law in the UK, which means that individuals would be committing a criminal offence if they used the relevant professional title without being registered with the relevant regulator. In relation to architecture, the relevant regulator, the ARB, states that regulating the protected title of architect is one of its highest profile activities (ARB, 2014) and is an issue that appears repeatedly in annual reports and policy documents published by the ARB. Taken at face value, the comparison in table 3 above would suggest that some 14,000 people are using the professional title of architect without being registered with the ARB and that some forty per cent of architects fail to register. While there are a number of legal exceptions that might explain the difference between the Labour Force Survey figures and the register of architects figure, the small number of prosecutions by the ARB (fewer than five in any year) might suggest that sampling problems with the Labour Force Survey are a more likely explanation of the difference in estimated numbers. As such, I would suggest that the Labour Force Surveys provide a number of methodological challenges when trying to estimate with confidence the number of people engaged in the professions in the UK, although they do provide an indication of the changing structure of the UK workforce and the growth in professions over the past forty years.

I have previously suggested that the concept of the professions was fuzzy, with different definitions and ideas around what constitutes the professions. Equally, a

key problem facing this research is the definition of professions regulation. Nunes et al (2009; p258) argue that professions regulation is a complex concept. Philipsen (2009) argues that professional regulation is where legislation provides a framework and organisational arrangement for the control of professional activities, including establishing rules of entry to the profession and conduct of those within the profession. Philipsen's definition is legalistic in nature, and complements definitions used by governments, regulators (Le Bianic and Svensonn, 2008; p 572) and by professions themselves. For example, recent research conducted in the field of nursing regulation by three practitioner academics defined regulation by drawing on the opinions of seventy five experts³ through the use of a Delphi study⁴. The study identified five key components of a professions regulatory system (Benton, González-Jurado and Beneit-Montesinos, 2013; p306); namely (1) subjects (that is, to whom does it apply); (2) purpose; (3) mechanisms (the policy instruments used); (4) means (the specific details of regulation); and (5) outcomes.

Such narrow, technical and legalistic definitions can be contrasted with more sociological conceptions of professions regulation. While management science, economics, psychology, political science and public policy academics all examine the professions, it is within sociology that perhaps the most significant literature in the field can be found. For example, Neal and Morgan (2000; p10) suggest that there is considerable sociological debate about the definition of professions and the related concept of professionalisation. Equally, Le Bianic and Svensson (2008; p573) identify a large number of sociological definitions and choose the conception developed by Lange and Regini (1989) for their study. Almost all sociological definitions focus on power and control and, for me, present significant challenges in terms of operationalising for this research. These definitions would not enable me to distinguish between different policy instruments, organisational form or policy change.

³ It is unclear from the article whether participants were experts in nursing, professional bodies, professions regulators or a combination of these.

⁴ Delphi is a qualitative method that uses an iteration of surveys to identify and develop consensus in policy, forecasting and other areas of potential contestation. It was developed in the 1950s by the RAND Corporation (O'Leary, 2013).

This research therefore draws on the legalistic and public administration conceptualisations, and defines professions regulation as:

Formal and informal restrictions, monitored and enforced by a discreet government agency or professional body, on entry to, and practice of, a specific occupation, where such occupation involves the acquisition and use of highly specialised, knowledge-based skills.

This definition has several advantages. It recognises that there are several forms of professions regulation, using various levels and delivered by differing types of organisations. It also conceptualises regulation and professions, and makes clear the distinction between occupations and professions. I think it also acknowledges the 'dependent variable problem' (Green-Pedersen, 2004 as cited in Howlett and Cashore, 2009; p37) faced by academics seeking to identify what constitutes a specific policy.

Here, I recognise that there is an overall policy domain in relation to how professions are regulated as a whole, and there are also specific forms of regulation or policy instruments around how professions are regulated (as I discuss in section 1.5 below). There are specific arrangements for regulating individual professions and there are also specific entry, conduct and exit arrangements. Hall (1993, as cited in Howlett, 2009; p243) differentiates between macro (institutions), meso (sectoral policy regimes) and micro (policy actor behaviour) and other authors have also attempted to distinguish between these 'nested' layers. Each of these levels or layers could be considered to be a dependent variable when analysing what motivates individual actors to engage in the policy process, and it is important to ensure that the research design utilised can capture and differentiate between these layers.

1.5 Forms of professions regulation

Professions regulation is made complex not just by the number of groups covered; it is also made complex because professions regulation comes in many forms. Kleiner

(2013) has identified over four such forms in professions regulation in the United States and Baggott suggests three ways in which UK professions regulators can be classified, namely according to the (1) degree of formality, (2) legal status, and (3) the extent to which non-professions are involved in the process (Baggott, 1989; p436).

One level of difference of form is between protection of title and protection of function. Protection of title is typically how statutory professions regulation is employed in the UK, which is quite different to how professions are generally regulated in North America or Europe. Protection of title prevents non-registered persons from using a professional job title. Such titles are specified in law or by the regulatory body, and there are usually criminal sanctions for those found guilty of inappropriate use. There is, however, no uniformity in how professional titles are defined, conceived or protected. Rather, a multifaceted, ad hoc and piecemeal system has developed over time. The Law Commission recently noted:

“There is no overall consistent or coherent approach to the titles that are protected. Sometimes the formulation of “registered [professional title]” is protected, whereas in other cases only the professional title itself is protected, without the inclusion of “registered” in the title. In other cases both versions are protected. Some of the protected titles do not appear to be titles at all or are obviously out of date.”

(Law Commission, 2014; p220)

Protection of function (sometimes called controlled acts) is more often used in North America and continental Europe and in the licensing of specific occupations in the UK. It involves some legal restrictions on the performance of specified tasks or activities to registered persons. In the United States, protection of title (or titling laws) are a much under-researched area compared to licensing (protection of function). Carpenter (2008; p343) argues that, in the United States, titling laws are not an ends in of themselves but rather a means to an end; a step taking in the direction of full licensure (protection of function) through the process of professionalisation. In the UK, protection of function is generally used in occupations other than professions, although there are some notable exceptions. Hearing aid dispensing is one of these exceptions. It is a criminal offence for someone to use the title hearing aid dispenser

unless they are registered with the Health and Care Professions Council (HCPC). It is also illegal for someone to *act* as a dispenser of hearing aids, which is defined as assessing and testing someone's hearing or prescribing a hearing aid (when selling an aid). Prescribing medicines and some audit activities are also functions protected to legally specified professions.

A second, and more useful, typology involves the legal form of regulation. This is similar to the typology used by Kleiner (2013) in terms of US professions regulation. In the UK, there are other such legal forms. Table 5 overleaf describes these forms.

Form	Description	Example
Statutory: independent ^{5 6}	Created by primary or secondary legislation. Body created to establish register and rules. Legal protection, via criminal law, of professional title or function. Often referred to as licensing in wider (especially US) academic literature.	General Medical Council, HCPC.
Statutory: professional body ⁷	Similar to above form but involves professional body being given statutory powers of registration and regulation. Legal protection, via criminal law, of professional title or function. Often referred to as licensing in wider (especially US) academic literature.	Regulatory reform since 1990 has significantly reduced this form. The Law Society and Royal Pharmaceutical Society were two examples before their professional body and regulatory functions were split.
Chartered	Legal protections granted by charter to professional body issued under Royal Prerogative. Often referred to as certification in wider (especially US) academic literature. Oldest form of regulation.	Accountancy and engineering. Architects have both chartered and statutory: independent forms of regulation
Government assured	Regulation is voluntary and no legal protections are afforded. Voluntary body is approved by government body.	Psychotherapy has three voluntary registration bodies, two of which are accredited by the Professional Standards Authority using its powers under the Health and Social Care Act 2012.
Voluntary	Registration is voluntary and there are no legal protections afforded to registrants.	Registration Council for Clinical Physiology.

Table 4: Legal forms of professions regulation in UK

Some of these forms are recent inventions. The use of government assured forms of professions regulation has been around for under twenty years, though has been identified as the preferred form for future regulation by the Coalition government

⁵ Gilardi (2004, as cited in Nunes et al, 2009; p259) refers to these as independent regulatory agencies, which he defines as 'public organisations with regulatory powers that are neither directly elected by people, nor directly managed by elected officials'.

⁶ Baggott (1989; p437) refers to regulation by a statutory agency promoted by government as 'direct regulation'.

⁷ Baggott (1989; p437) refers to this as formal self-regulation, which he divides into three categories: (1) regulation by bodies created by private associations (I refer to these as voluntary regulation) (2) regulation by private associations possessing statutory powers (I refer to these as chartered regulation) and (3) regulation by statutory body promoted by professional organisations (which Moran (2001) and Kaye (2006) refer to as self-regulation).

(HMG, 2011). Some professions are covered by more than one of these forms. And different legal forms have been at the heart of professions regulation over the last two hundred years. The regulation of medical doctors and pharmacists, for example, was introduced within ten years of each other (1858 and 1868 respectively). Medical doctors are regulated by protection of title⁸ and their legal form is (and was from inception) *statutory: independent*. Pharmacists are regulated by both protection of title and protection of function. Originally, pharmacists' regulation was *statutory: profession body* in nature. In 2009, the professional body was stripped of its regulatory functions and the General Pharmaceutical Council, a *statutory: independent* form of regulation was introduced. This change is just one example of a more general move in the UK away from *statutory: profession body* to *statutory: independent* forms of regulation – similar changes were made in the late 2000s with respect to the regulation of solicitors and barristers.

Both of these forms of regulation (*statutory: independent* and *statutory: profession body*) have historically been referred to as 'self-regulation', because although the form and function was established under statute, it was the profession itself which set and enforced the rules of entry, conduct and exit. This is often described as being a social contract between the state and the professions, a 'regulatory bargain' (Cooper et al, 1988 as cited in McGivern et al, 2015; p9) whereby:

"...in return for a monopolistic right of practice, there is a reciprocal commitment to admit only individuals of proven competence, to insist on the observance of an ethical code of conduct, and to protect the public against bungling and extortion."

(Slovenko, 1979 as cited in Mowbray, 1995; p29)

Thus the regulatory bargain means that professions were granted legal monopolies in return for enforcing standards (MacDonald, 1995; p11) or because of the knowledge-based services they provided for the state (Cooper et al, 1988 as cited in McGivern et al, 2015; p9).

⁸ Though the title protected is not doctor but rather Registered Medical Practitioner.

Some forms of occupational regulation combined protection of function with the non-statutory legal forms outlined above; typically, a chartered profession where specific functions are protected in law to a member of the relevant chartered institute or body. This is typically a form of regulation used in the financial sector. One example is that of the actuary profession. The chartered body for actuaries is the Institute and Faculty of Actuaries and provides four levels of membership, included chartered, certified, associate and fellow. As a professional body with a Royal Charter, there is no legal protection of the professional title of 'actuary', although only members of the institute may use the relevant designated letters after their name. However, certain functions are protected in law. So, for example, certain functions in relation to the management of pension funds require the appointment of an actuary, which is taken to mean a chartered individual member of the Institute and Faculty of Actuaries.

Not only are there different forms of regulative regimes, but these regimes develop over time. Marvel Bernstein was one of the early proponents of the concept of 'regulatory lifecycles'. In his 1955 book *Regulating Business by Independent Regulatory Commission*, Bernstein identified four stages in the development of regulatory regimes; namely: gestation, youth, maturity, and old age. A similar approach was taken by Otway and Ravetz (1984), specifically in relation to environmental regulation. In a recent paper on the temporality of regulatory regime development, Joshua Newman and Michael Howlett (2014, p498) combine various approaches to regulatory lifecycles and propose a seven-stage lifecycle model. These seven stages are:

1. Gestation, during which a problem emerges on the agenda as a threat, hazard or risk;
2. Infancy, in which there is poor knowledge and understanding of the problem and attempts to adapt existing statutes and rules address the issue;
3. Childhood, during which there is a desire to create new rules, but a lack of clarity as to what these rules/standards should be;
4. Youth, during which the new rules/standards are developed;
5. Maturity;
6. Old age, during which regulatory capture occurs; and
7. Death.

There are several points to note about this life-cycle model and its antecedents. First, it provides a means of *describing* how regulatory regimes have developed

rather than *explaining* how they will develop or why they have developed in such a direction. Indeed, I would suggest that it is a type of path dependency approach that assumes a single, increasingly narrow policy trajectory, where any decision between different choices by key actors is front-loaded in the early stages of the life-cycle. In section 3.3 of this thesis, I set out and criticise path dependency as a specific approach to describing policy change and also establish why such an approach is not consistent with my overall research design.

Secondly, this model is consistent with the kind of public interest explanation of the professions regulation policy environment I introduce in section 2.2 of this thesis. Implicit in the model is an assumption that government identifies and seeks to address market failure problems. It is only in the final stages that regulatory capture (a form of private interest) occurs. As such, this model precludes the possibility that professions may be key to identifying the market failure problem inherent in the early stages of the model, or that professions might seek, advocate or lobby for the introduction of regulatory regimes. It seems that for Newman and Howlett, professions (and other regulatees) are passive actors in the process, having regulation done to them by almost omnipotent civil servants rather than seeking or using regulation to further their own interests. Such a privileging of the role of civil servants is core to most path dependency models (Peters, Pierre and King, 2005; p1283).

Finally, and significantly in terms of this research, this is a model of how professions regulation regimes develop. I am cognisant of the fact that alongside any changes in the form and function of regulatory regimes, there are also temporal developments of professionalisation in relation to individual occupations and also changes in the structure and organisation of regulatory agencies. I am also cognisant of the different pace and progress between professions, regulatory agencies and regulatory regimes over time.

1.6 The European Union and professions regulation

So far I have suggested that professions regulation is multifaceted, both in terms of the policy instruments and organisational forms used and also because it changes over time. There are two further dimensions that are important to understanding the wider context within which this research is situated. The first of these is globalisation. Several studies have highlighted the impact of globalisation on the increased international mobility of various professions and the impact this has on professional education, standing and ethics. Several very recent studies have examined this in terms of nursing, for example, including Johnson, Green and Maben, (2014), Jones and Sherwood (2014), and Grootjans and Newman (2013). Such studies often examine the flow of professions from developing to developed economies, and the impact this might have on the labour force in the host countries and on the migrants themselves.

Nor is such research limited to professions such as nursing. Doctors, architects (Eldemery, 2009), accountancy (Annisette and Trivedi, 2013), (Brandau, Hoffman and Wompener, 2014) and a number of other professions have also been researched. There is also a growing body of research on international professional services firms. Despite this substantive body of profession-specific research, little has been written that examines the impact of globalisation on professions as a whole. For me, there are some clear conclusions that can be drawn from the totality of the profession-specific research.

In particular, the extant literature suggests that professions are increasingly operating across national borders, although there are some differences between professions providing commercial services (that is, services generally purchased by companies rather than individuals) and those providing services to individuals (largely in healthcare). Migration, specifically from developing to developed economies, is also significant for some professions. Professional bodies and professions regulators are increasingly challenged by the developments outlined above, with several studies highlighting the impact of different education routes and on professional standards.

The second key contextual theme, and that which is the focus of this section, is that of the impact of the European Union on professions regulation in the UK. While my research is focused on professions regulation in the UK, the European Union is increasingly involved in public policy in this field, both at the meta-regulation level and in terms of individual professions. Here, I want to discuss four ways in which the European Union is significant for my research: (1) free movement of labour; (2) free movement of services; (3) re-regulation; and (4) the impact of cultural-historical differences between EU member states on the changing form and functioning of professions regulation.

Free movement of labour

From the outset, the free movement of labour and people has been at the heart of the European project. Since 1957, numerous directives and programmes have been established to ensure such freedoms can be exercised. In 1960, the European Commission established a department to ensure that professional qualifications gained in one member state would be recognised in other member states (Le Bianic and Svensson, 2008; p574). This is known as mutual recognition, the 'process by which decisions reached in one member state are honoured in another' (Keighley, 2009; p3) and from the 1970s, several attempts have been made to institutionalise these arrangements. The current framework has three elements to it, namely (1) profession-specific arrangements covering a handful of professions, whereby qualifications gained in one member state are automatically recognised in all other member states (2) a general system, which started to develop in the 1980s and provides a system of mutual recognition of qualifications, where an individual member state assesses qualifications gained in other states to determine whether they are equivalent to its own requirements; and (3) a system that enables professionals to provide services on a temporary basis in member states other than the one in which they are registered and established.

Free movement of services

Although the mutual recognition of professional qualifications system contains arrangements for the provision of professional services on a temporary basis in a different member state, they also relate to the second area of European Union law

that is important to professions regulation; that of free movement of services. Although the free movement of services is one of the four 'freedoms' enshrined in the Treaty of Rome, by the early 2000s there were still a number of significant barriers and national requirements in place that limited the scope of the single market in the provision of services (Nicolaidis and Schmidt, 2007; p720). These barriers seemed imperious to numerous attempts to create a common market (Tikal, 1992), including those proposed by Lord Cockfield, then Commissioner for the Internal Market in his 1986 White Paper (Nicolaidis and Schmidt, 2007; p721).

Work to remove barriers to the free movement of services happened alongside the policy and political debates around mutual recognition of professional qualifications. Launched in 2000 as part of the Lisbon agenda and known by the name of the former European Commissioner for the Internal Market, Frits Bolkenstien (Grossman and Woll, 2011; p344), the Services Directive was agreed in 2006 and gave member states three years in which to reduce and simplify administrative procedures around the provision of services (Lequiller, 2010).

The draft directive proved to be highly contentious. It led to protests in Sweden, Belgium, Germany, Italy and France and is credited with the French 'No' vote in 2005 to the proposed European Constitution (Grossman and Woll, 2011; p348). The directive's scope and definition is complex (Lequiller, 2010). For me, it interacts with the mutual recognition of professional qualifications directive in a number of highly complex ways, with country, profession and policy area differences. By their very nature, some professions provide commercial services, generally to businesses and public bodies, that make them highly mobile across national borders (architects, for example (Le Bianic and Svensson, 2008; p568)). For other professions, especially those that tend to provide non-commercial services to individuals, language and other barriers reduce the possibility of cross-border service provision.

Re-regulation

It is also important to stress that the impact of the EU on professions regulation is not top-down, unidirectional or evolutionary in nature. Indeed, several writers raise the complex dynamic between the EU and different member states as a significant dynamic in the impact of EU law on professions regulation. There are two facets to

this dynamism: 'scope-creep', by the EU which, in effect, introduces Europe-wide regulation (van Riemsdijk, 2013; p50) and re-regulation by member states following liberalisation by the EU (Menz, 2011; p 536).

One of the key policy examples of scope-creep by the EU in relation to professions regulation is that of healthcare provision. Over the past twenty years, the EU has gradually and increasingly involved itself in healthcare policy (Brooks, 2012), largely prompted by judicial activism on the part of the European Court of Justice (Martinsen, 2005). This activism has sought to apply the principle of free movement of services to healthcare, an area that EU treaties clearly state is an area of member state competence (Vollard et al, 2013). One of the outcomes of this scope-creep was the 2011 agreement of a directive on patients' rights to cross border healthcare treatment within the EU (Kostera, 2013).

This increasing interference by the EU in national healthcare provision, quality of care and other areas of healthcare policy invariably impacts on professions regulation. One example of this is professional indemnity insurance. The Department of Health and a number of UK healthcare professions regulators recently consulted on a statutory requirement for healthcare professionals who are regulated by statute to hold professional indemnity cover as a condition of their registration. This requirement is being introduced as part of implementing the UK Government's obligations under European Directive 2011/24/EU on the application of patient rights in cross-border healthcare (HCPC, 2013).

Van Riemsdijk (2013) gives a second example in relation to nursing qualifications. She suggests that this is an area where the EU has 'scaled up the regulation of professional services to the supranational scale' (p 50) through the negotiations with eight eastern European countries before their accession to the EU in 2004. Such supranational regulation is inherent in the 2005 mutual recognition of professional qualifications directive, which gives significant power to supranational professional bodies (Le Bianic and Svensson, 2008; p 575).

Georg Menz (2011) cites Scarpf to suggest that service provision liberalisation within the EU often proceeds negatively (Scharpf, 1996, as quoted in Menz, 2011; p534)

through the abolition of barriers to cross border flows of professions and services. He suggests that member states often respond to this liberalisation by 're-regulating' labour, pay or conditions. Whether such re-regulation occurs, and the extent to which it is successful, depends on a number of member state specific factors, including the relative strength and cohesiveness of trades unions and business organisations (p 536). These factors are also identified by Maduro (2007).

Cultural differences

Despite the goals of the European Union, labour mobility remains very weak within the EU (Le Bianic and Svensson, 2008; p 574). Language remains an important barrier, as does the complexity of the general system of recognition (van Riemsdijk, 2013; p55). There are also differences between EU member states in the market structure of individual professions. In France, for example, architecture is still generally a sole practitioner profession, whereas in the UK and most of northern Europe, large multi-professional firms are common (Champy, 2008).

But perhaps the most significant difference is that of the cultural-historical development of the professions, between the Anglo-Saxon and Continental Europe models. Several writers, starting with Freidson (1986; p202) and including Neal and Morgan (2000), Le Bianic and Svensson (2008), Champy (2008) and most significantly Burrage and Torstendahl (1990) have highlighted differences between professionalisation and professions regulation between the UK/English speaking nations and European countries.

This distinction is important for two reasons. First, this research focuses on the UK and therefore it is important to root it in the cultural-historical development of professions in the Anglo-Saxon model. Secondly, as I will discuss in more depth in the next section of this chapter, and arising from the increasing role of the EU in professions regulation here in the UK, the Anglo-Saxon model has changed as it is applied here. This change process is often ignored by academics in the field.

The Anglo-American model. Several authors suggest that the concepts of professions and professionalisation are uniquely Anglo-Saxon (Neal and Morgan, 2000; p10). Freidson (1986; p202) suggests that there is a distinct process of

professionalisation in Anglo-Saxon countries (particularly the UK and the United States), whereby each profession develops its own campaign for recognition and state regulation, which in turn creates distinctiveness and exclusive membership of the profession, a process Parkin (1979) refers to as 'social closure'. In this Anglo-Saxon model, government has historically delegated to professional bodies control over entry to, conduct of, and exit from the relevant profession (Le Bianic and Svensson, 2008; p571) in exchange for acknowledging their accountability to society and the need to work in the public interest (Forth et al, 2011; p40). In this model, professions regulation is a bottom-up process and perhaps reflects a more pluralistic mode of engagement between government and interest groups in Anglo-Saxon countries.

The Continental model. The Anglo-American model of bottom-up, self-regulating and competitive professions is often contrasted with the continental model (Theobald, 2003; p1) in which the state is the decisive actor. Here, professionals are generally elite administration employees of the public sector (Svensonn, 2001, as cited in Evetts, 2000; p4). The state operates licensing and regulation functions and there are closed relations between professions and the civil service. Whereas in Anglo-Saxon countries market closure and control is operationalised by professional associations, in Europe, these tasks are performed by the state (Burrage and Torstendahl, 1990). The state undertakes activities to organise professional labour markets and the state is the main source of professional legitimacy (Le Bianic and Svensson, 2008; p571). This model of professions regulation reflects the more corporatist mode of engagement between government and interest groups in continental European countries.

These two models are to some extent 'ideal-typical' models (Theobald, 2003; p1) and as such may both exaggerated differences between, and mask the huge variation within, Anglo-Saxon and European systems. There is some evidence to suggest that the continental model is being challenged by the changing nature of professional work (Theobald, 2003; p1); that the Anglo-Saxon model is being undermined in the UK by the European Union (Neal and Morgan, 2000; p18), and that other English speaking countries are increasingly moving away from bottom-up,

profession-control self-regulation and towards a more state-interventionist model (Kaye, 2006; p106).

The Anglo-Saxon versus Continental categorisation also reflects *within-state* theory and analysis of professions (Evetts, 2000; p1), whereas increasingly, as I outlined above, professions and professions regulation is challenged by globalisation and the increasing *inter-state* nature of regulation. Indeed, there is some (albeit limited) theoretical and empirical examination of impact of the EU's role in professions regulation, with several authors suggesting the emergence of professional federations, collaborations of EU agencies and organisations and European professional bodies that are increasingly making decisions about the extent, form and function of EU regulation in this field (Evetts, 2000; p1)(Le Bianic and Svensson, 2008; p567).

It is also the case that legislative and policy proposals by all governments over the last thirty years have changed the nature of professions regulation in the UK. Indeed, it is now possible to talk of the UK system as 'shared' rather than self-regulation (PSA, 2013; p1). In the next section, I briefly discuss some of the key changes in the past couple of decades in how and by whom professions regulation is delivered in the UK.

1.7 Policy context

There is a dearth of academic literature on the development of professions regulation over the past thirty five years; almost nothing is available on the meta-regulation of professions and the limited work that does exist tends to be profession-specific. By meta-regulation, I draw on Christopher Hood's (2001) definition to mean the approach to regulating professions across the whole of government, regardless of the sector or the individual occupation concerned. It would also be wrong to talk of this period as if there is a single narrative that progresses in a rational way over the period. Here, I want to explore three key narratives in the development of government policy proposals around the professions regulation; (1) an ideational war between the regulatory zeal of Labour and the deregulatory fervour of the

Conservatives; (2) the role of exogenous shocks, particularly in relation to health professions regulation; and (3) the 'war' on the professions.

Conservative, 1979 to 1997. Several commentators have stressed the deregulation zeal of the 1979-1997 governments (Dodds, 2006; p527), particularly Margaret Thatcher's second term (1983 to 1987). The administration mounted a deregulation initiative shortly after it won the 1983 election, leading to the publication of the report ***Burdens on Business*** in March 1985. The policy ideas contained in this report influenced many subsequent developments, including the 1985 White Paper, ***Lifting the Burden***. On introducing the White Paper to Parliament, the Financial Secretary to the Treasury, John Moore MP, said:

"The White Paper is the first major step in a continuing programme of removing unnecessary regulations. It refers to about 80 measures covering a wide range of initiatives in a number of areas, including planning, tax and social security, employment protection, and trade and industry.....This is but the beginning of the process." (HC Deb 16 July 1985 vol 83 cc171-85)

In 1986 the government published a further White Paper ***Building Businesses, Not Barriers***. This announced the creation of the Enterprise and Deregulation Unit, and deregulation units in each government department. Of course, possibly the most significant impact of this deregulation zeal was the 'Big Bang', the phrase used in describing the large-scale deregulation of financial markets in October 1987. The Big Bang became one of the cornerstones of Margaret Thatcher's deregulation programme and included measures subsequently adopted around the world, including abolition of fixed commission charges and of the distinction between stockjobbers and stockbrokers on the London Stock Exchange and change from open-outcry to electronic, screen-based trading.

While much of the rhetorical of this administration was about deregulation, the reality was somewhat different. The programme of utilities privatisation involved the introduction of new economic regulators, many of which still exist today (Ofgem, for example, is a decedent of different energy regulators established when gas and electricity were privatised. Ofcom is a descendant of a number of different regulators,

including Oftel, created when British Telecom was privatised. Ofwat, established when water was privatised, exists almost unchanged since its creation).

And in relation to professions regulation, the approach of the 1979 to 1997 Conservative governments was, at best, mixed. The deregulation of opticians market in the mid-1980s is one such example. The optics market had been regulated since 1958, when the General Optical Council was introduced and a legal monopoly on the supply of spectacles was created (Calver, 2010; p113). This monopoly restricted the ability to supply to medical practitioners and registered opticians and also restricted advertising. Provisions in the Health and Social Security Act 1984 partially deregulated the market and was aimed at reducing the retail cost of spectacles. However, the reforms were followed in 1989 by significant changes to the composition and powers of the General Optical Council, amending the largely self-regulating body created in the 1950s in line with changes that were later introduced to a number of regulatory bodies. The Major government introduced statutory regulation in the fields of osteopathic and chiropractic therapies in the early 1990s (albeit it initially proposed in Private Members' bills) and the groundwork was laid for the reforms in architect regulation that led to the establishment of the ARB in 1997.

Labour, 1997 to 2010. The election of Labour in 1997 signalled a move away from the deregulation zeal of Margaret Thatcher and John Major (Dodds, 2006; p527). There was initially a change in government rhetoric from deregulation to **better** regulation (the 'Third Way' between regulation and deregulation). However, this involved adopting and developing the risk-based approach to regulation that had been introduced under the previous Conservative administration (Dodds, 2006; p529). There were also major changes to the departmental organisational structure. The *Better Regulation Guide*, published in August 1998, introduced Regulatory Impact Assessments and replaced the previous administration's Guidance on Deregulation, Compliance Cost Assessment and Risk Assessment. In early 1999, the government introduced a requirement that all legislation and regulations should be cleared with newly renamed the Regulatory Impact Unit. Indeed, in many ways, the Labour administration's economic and social regulation objectives were similar (albeit it expressed differently) to the previous Conservative administration. Both were keen to involve businesses in the process of regulatory change. Both wanted to

limit or reduce the business burdens of regulation. And questions as to whether the administrations were successful in these objectives were raised around both of their programmes.

However, one key difference between the regulation programmes of the two administrations was with respect to professions regulation. As I have noted above, the 1979-1997 Conservative governments were focused on changes to the regulatory regimes as they affected businesses or to enable utilities privatisation. Few changes were made to the regimes affecting the regulation of the professions, and those that were made seemed piecemeal and without any clear policy direction; deregulatory (and then regulatory) in one area and new regulators in two other, all in the area of health professions regulation.

There had been some work done with regards to changing the regulation of architects. In the early 1990s, the Architects Registration Council of the United Kingdom (known as ARCUK, the profession-led registration body established in the 1930s) recommended that the regulation of architects be reviewed. The Government appointed Sir David Warne to undertake this review, who subsequently recommended abolition of ARCUK and deregulation of the title 'architect'. This proposal was initially supported by the professional body, but this position changed following lobbying by ordinary architects for the retention of protection of title (Ball, 2009). In response, the Conservative government proposed to reconstitute and rename the statutory regulator. In 1996, ARCUK became the ARB and in 1997, the Architects Act consolidated previous legislation and established a new regulatory framework. The key changes made to the regulatory body were changes to its rule-making and disciplinary powers, a reduction in the size of its board from 77 members to 15, and a change in its composition from profession-led to lay majority (Department of Environment, 1994).

For me, the changes made to the regulatory regime covering architects and opticians were the blueprint used for a major programme of regulatory change under the 1997-2010 Labour administrations. With respect to healthcare professions regulation, the Labour administrations made significant changes to the regulation of professions allied to medicine, including changes to the regulatory body, the size and selection

method for boards, the form and function of regulation, the disciplinary powers of the regulator and the number of allied professions regulated.

The Labour governments encouraged unregulated professions to 'apply' for regulation, so that in 2004 the Health Professions Council (following its consideration of a number of applications by professional bodies) used its statutory powers to recommend to Ministers that six new professions be regulated, and also identified a number of other professions for regulation. Indeed, these commitments covered 1.4 million people in eight professions (HM Government, 2011) and a number of healthcare professions were brought into regulation for the first time. In February 2007, the government published the White Paper ***Trust, Assurance and Safety – The Regulation of Health Professionals in the 21st Century*** (HMG, 2007) which set out a number of policy commitments with regards to extending and improving health professions regulation. One of the commitments in the White Paper resulted in the establishment of the *Extending Professional Regulation Working Group*, initially chaired by the then President of the HCPC, Professor Norma Brook CBE. While this working group did not add to the list of healthcare professions already identified for statutory regulation, it is clear from even a cursory reading of the working groups report that statutory regulation was seen as the expected endpoint for emerging healthcare professions.

A series of major changes were made to the General Medical Council and how doctors were educated, trained and regulated (many of which were linked to the Shipman Inquiries, as outlined in the following section). There were also a number of areas where the regulatory regime was changed from *statutory: professional body* to *statutory: independent*, with the Royal Pharmaceutical Society, the Law Society and the Bar Council all losing their regulatory roles. A number of occupational and professional groups outside of healthcare were also regulated for the first time, including social workers, teachers and the private security industry.

Conservative, 2010 to present. To some extent, there is a continuity (albeit it with different rhetoric) between post-1979 governments with respect to economic and social regulation. In the field of professions regulation, there is more of a contrast between Conservative (and Conservative-led) administrations and those of Labour.

In healthcare professions regulation, the new government immediately stopped work towards introducing statutory regulation of psychotherapy. The statutory regulation of psychotherapy was first recommended by the Foster Report in 1971 (Wake and Young, 2009; p1) and several attempts were made to achieve this before the Labour government proposed regulation in ***Trust, Assurance and Safety – The Regulation of Health Professionals in the 21st Century*** (HMG, 2007).

The proposed regulator, the HCPC, expected an eighteen month timetable to open the register and the government was committed to completing the passage of the necessary legislation by the end of 2008. However, there had been a significant campaign against the proposals by parts of the psychotherapy profession, resulting in the publication of at least two books (Janet Haney's *Regulation in Action* and Richard Mowbray's subtlety titled *The Case Against Psychotherapy Registration*); several Parliamentary questions, and some noteworthy appearances on BBC Radio 4's *You and Yours* programme. There had also been a campaign of passive resistance by several of the professional bodies, so that the necessary legislation to introduce regulation fell when the General Election in 2010 was called and Parliament dissolved.

The incoming Conservative-led government almost immediately confirmed that it would not seek to introduce regulation of psychotherapists. Shortly after the election, it published a White Paper, ***Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers***, which marked a significant change in the stated position of government towards statutory regulation of the professions. Two sections of this White Paper are particularly enlightening:

“...the regulatory framework is... complex, expensive and requires continuous Government intervention to keep it up to date. More generally, reducing regulation is a key priority for the Coalition Government.” (HMG, 2011; p3)

“....the Coalition Agreement signaled an end to the assumption that national statutory action should be the first resort in dealing with risks arising from professional activities or concerns that happen locally. It is not necessarily the case that the state should automatically take responsibility for managing risksor

assume that national legislation is the most effective vehicle for doing so.” (HMG, 2011; p4)

In addition to halting progress towards regulating psychotherapy, the government also abolished the General Social Care Council (created in the early 2000s to regulate social work) and transferred its registers to the multi-profession regulator, the HCPC. It also made changes to the Commission for Healthcare Regulatory Excellence (CHRE), the government agency set up by the previous administration to co-ordinate the activities of the nine separate health professions regulators. The reforms included a change of name, a move to self-funding status and the introduction of an accreditation process for voluntary registers. Outside of healthcare, the new government also abolished the General Teaching Council of England which, like the General Social Care Council, had been established in the early 2000s.

Conclusions

Of course, it would be entirely plausible to argue that there is a significant distance between the ‘regulate all professions’ position inherent in ***Trust, Assurance and Safety*** and the ‘only as a last resort’ position inherent in ***Enabling Excellence***.

In reality, the distance is far less than a cursory reading of these two policy documents would suggest. The 1997-2010 Labour government failed to implement a number of its own proposals to regulate professions and many of its reforms were a continuation (albeit on a more substantive scale) of the kind of regime changes that had been instigated by the previous Conservative government with regards to risk-based regulation and changes to the form and function of professions regulators. And, despite the rhetoric, the Conservative-Liberal Democrat government was less than deregulatory in its record. Although it has abolished two regulators, both professions are still regulated (social workers by the renamed HCPC and teachers by an executive agency of the Department for Education). The new government also proposed introducing regulation for two new professions - herbal medicine practitioners and public health practitioners. While little progress has been made towards the regulation of the former, the government recently concluded a public

consultation on the statutory regulation (by the HCPC) or non-medical public health practitioners.

It is also the case that successive governments since 1979 have been accused of waging a war on the professions. David Marquand, the academic, historian and former Labour Member of Parliament argued in an article in the *New Statesman* that 'if Thatcher wins her war against the professions, we shall have a nastier, poorer society' (Marquand, 1990; p19). He was commenting on perception that a 'natural alliance' between the Conservatives and the professions was being to show signs of strain (Alaszewski and Manthorpe, 1990; p237); as Margaret Thatcher sought to break the post-war consensus about the role of the state in the welfare of its citizens (a consensus by which, according to the political scientist R A W Rhodes, the welfare state was the 'era of the professional' (Rhodes, 1987; p101)). In breaking this consensus, it was believed that Thatcherism would involve introducing the market to break up professional monopolies; many writers pointed to the experience of opticians as they were exposed to the 'full rigour of market forces' (Higgins, 1988, as cited in Alaszewski and Manthorpe, 1990; p239). Indeed, David Levi-Faur (2011) talks about a general trend in professions regulation over the past thirty years or so of 'regulation-for-competition', a pattern of reregulation with the explicit goal of promoting competition within and between professions.

So significant was this perceived onslaught that a recent report on the state of UK professions claimed that Margaret Thatcher's governments were 'devastating for the professions' because:

"The Thatcher governments challenged the legal monopolies of the professions.....Where past administrations had avoided confrontation with the professions, the Thatcher governments challenged them head on with proposals for ending restrictive practices and strengthening the public regulation of professional bodies." (SPADA, 2009; p11)

Similar accusations were made against the 1997-2010 Labour governments. The psychoanalyst and academic Darian Leader, for example, argued that 'just as the 1980s saw the crippling of the trade unions, so the 1990s and 2000s bear witness to

a concerted effort to weaken the so called professions' (Leader, 2008; p206). Leader was one of a small but highly vocal group of psychotherapists who vigorously opposed government proposals for the regulation of their profession. And a number of academics and others raised significant concerns about the audit and target culture that was a hallmark of the 1997-2010 governments. Concern was also raised about the increased use of what Oliver James calls 'regulation inside government' (2000; p328); that is, government regulation of services it provides or professionals it employs. Coupled with the audit and target regimes, these regulatory reforms were seen as fundamentally changing the work of professionals and particularly attacking their autonomy. This explosion in audit and target regimes has several, well documented causes, of which the failures of self-regulation were one (Downe and Martin, 2007; p216).

If there was a government war on the professions in the post-1979 period, it was not a very bloody war. Despite the rhetoric outlined above of the ***State of the Professions Today*** report by SPADA, Thatcher's governments were more pragmatic than dogmatic when it came to reform of the professions. Alaszewski and Manthorpe (1990; p239), for example, suggest that established professional groups were protected from market forces reforms and that any reforms were based on (a) organisations, agencies and professions that did not have public support and (b) were dependent on their existing relationships to the market. Halliday and Carruthers (1996; p371) have suggested that the Insolvency Act of 1986 actually created new professions monopolies and was used by Margaret Thatcher's government to professionalise some areas of business practice.

Equally, the 1997-2010 Labour administrations were more pragmatic than some have made out. During the passage of the Legal Services Bill, several lawyers and other interest groups argued that the proposals to split the profession and regulation roles of the Law Society and the Bar Council represented an attack on the legal profession. It is questionable whether such proposals - had they been so dangerous - would have made it through Parliament, given the number of lawyers who sit on both the green and red benches.

Exogenous shocks. So far, I have highlighted the similarities in government approaches to professions regulation in the post-1979 period. I have highlighted that regimes based on risk-based regulation, first raised by the Major government in the 1990s, were pursued vigorously by the Labour administrations of Blair and Brown. I have also suggested that the changes to the organisational form and function of regulators initiated by the changes to the registration and regulation of architects have subsequently been rolled out across a number of other professions.

But there has also been a change in the makeup of professions regulators, particularly those in healthcare, and a movement from self-regulation to 'regulated self-regulation'. Self-regulation can be defined as 'the deliberate delegation of the state's law-making powers to an agency, the membership of which wholly or mainly comprises representatives of the firm or individuals whose activities are being regulated' (Ogus, 2004). It is both a set of institutional arrangements and a 'regulatory ideology' (Moran, 2001). In healthcare professions regulation, it is generally accepted that this self-regulating or 'collegial' model of regulation was introduced by the Medical Act of 1858 and the establishment of the General Medical Council, and was the dominate regulatory regime for the following 150 years. However, the key here is to understand a core element of Anthony Ogus' definition: self-regulation is the introduction of a state-sanctioned monopoly by a single body of the profession regulating the profession. The introduction of the General Medical Council required the replacement of a system of over twenty licensing schemes, all of which were 'self' regulating in that they did not involve the sanction or legitimisation by the state. Many moves to statutory regulation in recent years have involved a similar process of replacing and reforming registers that previously existed, albeit it on a voluntary basis.

Over the past fifty years, there have been a number of significant changes to this model across the range of professions. Moran (2001) argues that self-regulation suffered a 'grand systematic crisis' in the 1970s and has been in terminal decline ever since. Such are the nature of these reforms, that many professions can now no longer be understood as self-regulating (Dixon-Woods, Yeung and Bosk, 2011; p1453) but rather has changed to what Robert Kaye (2006; p106) and others have termed 'regulated self-regulation' and Dent (2005; as cited in Kulhmann and Allsop,

2008; p178) described as 'enforced self-regulation'. This move not only involves changes to the regulatory body (increase in lay representation and move from a 'binary'⁹ disciplinary system to a progressive system of sanctions), but also the introduction of 'meta-regulators' or super-regulators, whose role is to regulate the 'front-line' regulators.

Several writers suggest that this transition can be explained as a rational policy response to the failings of self-regulation, particularly highlighted by a series of scandals in healthcare. Kuhlmann and Allsop (2008; p179) suggest that public trust in the system of self-regulation has been severely reduced as a result of scandals, and the resulting public inquiries have exposed the failures of self-regulation. Dixon-Woods et al (2012), Davis (2000) and Moran (2001) all highlight a series of major public inquiries. Monica Shaw argues that the defining moment was the publication of the Bristol Royal Infirmary inquiry¹⁰ reports (Heyman, Shaw, Alaszewski and Titterton, 2010; p173) and suggests that this reflects a wider, more system-wide move to an inquiry culture in the NHS. Others have suggested the reports from Janet Smith's inquiry¹¹ about Harold Shipman as a more important impetus for changes in the regulatory regimes around healthcare professions.

Indeed, a number of government reforms have been explained by direct reference to the recommendations made by these public inquiries. For example, the first paragraph of the 2007 White Paper, ***Trust, Assurance and Safety: the Regulation of Healthcare Professionals in the 21st Century*** reads:

*"This White Paper sets out a programme of reform to the United Kingdom's system for the regulation of health professionals, based on consultation on the two reviews of professional regulation published in July 2006: **Good Doctors, Safer Patients** by the Chief Medical Officer (CMO) for England and the Department of Health's 'The*

⁹ A system that involves only one sanction, namely removal from the register. The term binary refers to the 'all or nothing' nature of misconduct and was identified as a key failing of the system of self-regulation in the report of the inquiry into the Bristol Royal Infirmary scandal in the 1990s.

¹⁰ In 1998, the government established a public inquiry into the management of care of children receiving complex cardiac surgery at the Bristol Royal Infirmary between 1984 and 1995. The inquiry was chaired by Sir Ian Kennedy and reported in 2001.

¹¹ In 2001, the government established a public inquiry into Harold Shipman, the Manchester GP who was convicted of killing fifteen patients and suspected of killing over 250 patients. The inquiry was chaired by Dame Janet Smith and five reports were published by the inquiry team.

regulation of the non-medical healthcare professions'. It is complemented by the Government's response to the recommendations of the Fifth Report of the Shipman Inquiry and to the recommendations of the Ayling, Neale and Kerr/Haslam Inquiries, Safeguarding Patients, which sets out a range of measures to improve and enhance clinical governance in the NHS." (HMG, 2007; p5)

Equally, the Mid-Staffordshire¹² scandal led to a plethora of inquiries and reports with a total of over five hundreds recommendations, most of which directly related to the system of healthcare professions regulation. These are increasingly impacting on government policy around both the commissioning and regulation of healthcare. One such impact is current work on introducing a 'duty of candour' for healthcare professionals working in the NHS. A key recommendation of the Francis inquiries around Mid-Staffordshire was that such a duty should be introduced. On 7 March 2014 the Secretary of State for Health asked the Professional Standards Authority for Health and Social Care (the PSA, formerly the CHRE, the government body that oversees the nine healthcare professions regulators) to work with regulators to support progress in introducing a consistent approach to the duty of candour. In addition, in October 2014, the Scottish Government launched a consultation on introducing a statutory duty of candour.

There are a number of other examples of policy and legislative proposals around changes to healthcare professions regulation that are intended to implement recommendations of public inquiries into healthcare scandals. While these might be trigger events in the process, I would disagree with the assertions made by Dixon-Woods et al (2011), Davis (2000), Moran (2001) and Heyman et al (2010) that there is a causal link between these events and the subsequent changes in the regulatory regimes. For me, these authors adopt an overly path dependency approach, which I criticise in detail in chapter 3. It is also the case that similar moves from self-regulation to 'regulated self-regulation' are evident outside the UK. For example, Volger et al (2014) identify similar changes with respect to pharmacist regulation in a

¹² In June 2010, the government established a public inquiry into the role of the commissioning, supervisory and regulatory bodies in the monitoring of Mid Staffordshire Foundation NHS Trust following the suspected unnecessary deaths of between 500 and 1200 patients due to substandard care between 2005 and 2008, The Inquiry was chaired by Sir Robert Francis and was published in 2013. In addition to the public inquiry, a series of reports were commissioned by the government, including the Keogh Review and the Cavendish Review.

number of different European countries, a theme that is also identified by others. In the wider literature, a number of commentators have highlighted the emergence of the 'regulatory state' in most western liberal democracies (Levi-Faur, 2011)(Majone, 1996), of which a move towards state regulation of the professions is one part.

Some have located these changes in terms of the UK's relationship with the European Union. Shackleton (1985, as cited in Baggott, 1989; p447) argues that the UK system is increasingly challenged by a continental approach to professions regulation and Majone (1996) identifies the emergence of an EU regulatory state. And even within the UK, the transition from self-regulation to regulated self-regulation is not unique to healthcare. Architects, solicitors and barristers have all experienced similar changes.

1.8 Conclusions

In the introduction to this chapter, I suggested that there is no 'one size fits all' form of professions regulation in the UK. I established that professions are an increasingly important part of the UK economy and, as the numbers and proportion of the workforce employed in the professions has grown, so too has the scale and complexity of professions regulation. This regulation comes in a number of different forms, and over the past thirty years or so there has been a gradual change as professions regulation has moved away from a system of self-regulation and towards a system of 'regulated self-regulation'. These changes are influenced by a number of factors, including the UK's relation with the European Union and a general belief that self-regulation serves the interests of professions and not the public.

These changes have important implications for my research. First, these changes in the meta-regulation of the professions have been applied at different times and in different ways to specific professions. I need to bear this in mind when examining how and why regulation has changed and what effect this has made to individual professions. Secondly, these changes in the meta-regulation of the professions have been described by policy makers and regulators as being necessary to tackle professional self-interest and have also been justified in the public interest. My core

research question is whether these changes are best explained by public or private interest theories. Finally, each of the professions I examine in this research, and each of their regulatory regimes, has and will continue to change over the period I am investigating and the period over which my research was conducted.

2 Theory

2.1 Introduction

The core assumption driving this research is that professions regulation policy is the outcome of a complex, dynamic negotiation between different groups: professional bodies, other interest groups, regulators and policy makers. These groups are coalitions of individual actors, each motivated to achieve goals through the professions regulation policy process. The key research question is *what motivates these actors* in their negotiations in the policy process: the public interest or their self-interests? From this core assumption that professions regulation policy is the outcome of a complex, dynamic negotiation between different interest groups, further assumptions have been developed that drive specific research questions and an appropriate method has been adopted. To focus this research, two self-interest theories of the regulation policy process have been explored. These theories - rent seeking and bureau-shaping – share core assumptions of the self-interested motivations of key actors, but examine this process from the viewpoint of a single interest group (the regulated profession in respect of rent seeking¹³ and the regulator in terms of bureau-shaping). In terms of the public interest, public service motivation is the key model examined. To provide further focus, this research compares public interest and private interest explanations in relation to five professions in the UK.

Of course, this thesis is not the first example of such comparisons. As I outlined in the preface, debates about who benefits from professions regulation have been core to real-world political and wider debate around the introduction of specific regulatory forms to individual professions. There has also been substantive academic debate, usually involving one side refuting (usually theoretically, occasionally empirically) the arguments made by the competing explanation. Much of this academic debate is focused on one particular type of regulation – economic regulation – and is usually centred on federal or state regulation in the United States. For example, in his 2008 book *Regulation and Public Interests*, Steven P Croley sets out to demonstrate the ‘possibility of GOOD regulatory government’ (Croley, 2008, subtitle of book). Croley

¹³ This is not to say that rent seeking behaviour is limited to professional groups or others seeking regulation. Policy makers and regulators can engage in rent seeking behaviour. However, in this research, the examination of rent seeking behaviour is limited to professions seeking, or currently covered by, statutory regulation.

sets out what he claims are a number of empirical examples of regulators making decisions in the wider public interest and uses these to refute self-interested explanations provided by (amongst others) Public Choice academics. Oliver James, though not about regulation, compared public and private interest (specifically Dunleavy's bureau-shaping model) in his research on the 1980s executive agency reforms in the UK civil service (James, 2003) and concludes that self-interests, not public interests, provide greater explanatory power.

There have also been a large number of peer-reviewed articles on the subject – Robert Tollison and Richard Wagner, for example, compared public and private interests in the provision of public health services (1991) and, more recently, Thomas Schillemens (2013) has used stewardship theory to examine the clash of interests between government departments and agencies. There are also some examples in relation to the regulation of a single profession or industry, such as Lowenberg and Tinnin's examination of professional and consumer interests in the child care sector in the United States (1992).

While grounded in this wider work, my research provides unique insights on the public versus private interests debate. First, I focus on UK professions regulation. Such regulation is increasing in scale and complexity in the real-world, but has not been the focus of substantive academic inquiry. Secondly, much of the existing empirical research relates to two professions; doctors and lawyers. This research focuses on five other professions, some of which have not previously been the subject of empirical research. Finally, much of the existing work focuses on broad theoretical approaches (public versus private interest explanations), whereas this thesis examines specific models within these broad approaches.

This chapter provides a critical overview of the literature that underpins the core assumption outline above. It is not intended to be an exhaustive exploration of the academic literature in this area, but rather frames the overall theory and method of this research. Such a review is important for four reasons. It allows me to assess the current state of knowledge in the field, providing the context within which my research will sit. Secondly, it enables me to develop a theoretical framework, setting out what factors are important in assessing who benefits, how and why from the

statutory regulation of the professions. It allows me to identify which groups bear the costs of regulation. Identifying the costs and benefits of regulation is, for me, a key part of understanding what motivates key actors in the process. It also helps me identify implications this might have on future research and policy development and any gaps in current knowledge, allowing me to focus areas of my research to add real value. Finally, it provides a framework from which to develop my methodology to compare public interest and private interest explanations, focusing on the three specific models outlined above, and helps me select appropriate research tools.

There are a number of key research areas that provide structure to this literature review. I begin by examining regulation theory, both in terms of public policy and policy analysis. I move on to briefly set out the debate between public and private interest theories. I then develop a more detailed analysis of Public Choice as a school of thought within public policy and its place within Rational Choice theory, from which my two self-interest models (bureau-shaping and rent-seeking) arise. Fundamental to both schools and to this research is the conceptualisation of human rationality. I examine the overall theoretical concept of human rationality, its key criticisms and my appraisal of thinking in this area. I then set out my assumptions around human rationality underpinning this research and its implications for the development and implementation of regulation policy in relation to five professions in the UK.

I explore the two self-interest models that I am seeking to examine in this research, namely rent-seeking and bureau-shaping. This examination covers both theory and empirical evidence of these two concepts and relevant criticism. I will then set out my own critique of these two theories. In particular, a significant issue with these models, and one I seek to explore in this research, is that they each focus on a single interest group and thereby represent only a partial picture of the policy process.

I then explore public service motivation as the core model I will use to examine public interest explanations of the policy process. I suggest that rationality (that is, individual, goal-orientated behaviour) is as key to understanding this model as it is to understanding self-interest explanations. I also identify that private interest

explanations tend to be focused in the public policy literature, whereas public interest explanations tend to be located in the public administration literature. I then outline my criticism of public service motivation, drawing on rationalist models and, specifically, notions of expressive interests.

Finally, I establish that private interest explanations of the professions regulation policy process are more convincing, at least at the theoretical level.

2.2 Regulation theory

Given the increasing scale and coverage of regulation, it is perhaps not surprising that academic interest in regulation policy and practice has also grown. Lawyers, economists, sociologists, management scientists and political scientists have all contributed to the development of regulation theory in the academic literature. In terms of public policy, the body of literature either focuses on theory, providing normative and positive explanations of the regulation policy process; or on policy analysis, which tends to be positivist and descriptive. I would suggest that there is often a disconnect between theory and policy analysis in this field. While policy analysis provides helpful insight into actual relationships between different actors in the regulation policy landscape, it oftentimes fails to root such analysis in a wider theoretical framework of the public policy process. This division is important because, for me, public interest models tend to be located in the public administration literature whereas private interest models are more often found in the public policy literature.

There are two broad rationales for professions regulation identified in the policy theory literature: public interest and private interest (Stigler, 1971) (Hantke-Domas, 2003). Public interest theory suggests that regulation is introduced for one of three reasons. First, regulation is introduced to improve efficiency and competitiveness, almost always in fields where monopolies arise. This form of regulation is called economic regulation (Windholz and Hodge, 2012; p220). Such regulation uses control of prices, access to markets, competition legislation, access to market entry or exit and other instruments to reduce barriers to competition and innovation (for

example, by minimizing the exploitation of monopoly). Such arguments are the oldest justification for regulation.

The second justification identified with the public interest is regulation introduced to address externalities that lead to some form of social harm. This is often referred to as social regulation (or 'protective' regulation, as described by Eugene Bardach and Robert Kagan (1982)). Baldwin, Scott and Hood define social regulation as the 'exercise of state influence in relation to the unwanted effects of industrial activity on society...' (1998; p29). Such arguments are used to justify environmental tariffs, health and safety regulation and some forms of consumer protection; interventions that attempt to compel producers to internalise costs that would otherwise be imposed on others (usually non-users of their services). Social regulation is also justified on the grounds that it achieves socially desirable outcomes such as justice, equity, social cohesion, trust and fairness. This is an alternative definition of social regulation, and one that views markets as inherently unequal and inconsistent with principles for a 'just' society (Windholz and Hodge, 2012; p224).

There is a further justification that appears in some of the literature, and one that is particularly relevant to this research, which is that the free market may be harmful to consumers because of information asymmetry between providers and customers (Garoupa, 2011; p455) and because of the externalities that such asymmetry may cause (Van Der Bergh and Paccès, 2012; p19). Information symmetry here creates demand for external oversight to ensure consumer protection from inferior quality services (Avery and Shultz, 2007; p265). Information asymmetry was first identified by George Akerlof in his 1970 article *The Market for Lemons*. Initially challenged in much of the economic literature, the article is now considered seminal (Levin, 2001; p657) and led to Akerlof being awarded the Nobel Prize for Economics in 2001.

Akerlof suggests that some markets are characterised by information asymmetry between buyers and sellers; that is, sellers hold more information about the quality of goods or services than buyers. In such markets, adverse selection is likely to occur. In market situations where it is difficult for buyers to assess the quality of the goods or services, and where quality is costly to produce, Akerlof posits that there will be a downward pressure on quality as sellers of high quality goods will not be able to

command high prices and will therefore be crowded out by lower quality producers. Akerlof provided a number of examples to illustrate this concept – insurance and cars being two significant examples. Subsequent empirical work has tested the extent and effect of information asymmetry in the market for cars, the New Orleans slave market, thoroughbred horses and even cherries (Mocan, 2001; p1).

It is clear from Akerlof's work that he starts with an assumption that, in order for markets to function properly, both buyers and sellers need 'perfect' information. As such, although Akerlof's work is often seen as a criticism of classical micro-economic models of consumer behaviour, but for me he accepts the main tenets of such models. In doing so, Akerlof does not account for normal, real-world human decision-making - that in all markets, agents' decisions are made in the context of their bounded rationality, knowledge problems and fundamental uncertainty (issues I discussed later on in this chapter).

I highlighted above that Akerlof's thesis has been tested in markets as diverse as insurance, second hand cars and cherries. However, while much government policy around professions regulation is justified in terms of dealing with information asymmetries, there is limited academic work that explores this. Andersen (2009; p82) draws on the work of sociologist Eliot Freidson (2001) by suggesting that professional services require specialised expertise and knowledge, which, because it cannot be codified, cannot be controlled and therefore creates information asymmetries. Misztal, suggests that a professional's specialist knowledge, expertise and performance are beyond the capacity of an 'ordinary person to assess or monitor' (1996, as cited in Dixon-Wood et al, 2011; p1453). Akerlof himself only dedicates four lines to this, saying:

"Licensing practices also reduce quality uncertainty. For instance, there is the licensing of doctors, lawyers and barbers. Most skilled labour carries some certification indicating the attainment of certain levels of proficiency. The high school diploma, the baccalaureate degree, the Ph.D, even the Nobel Prize, to some degree, serve this function." (Akerlof, 1970; p500)

There are several points to note about this statement. It is not clear what information asymmetries exist between the barber and the customer and why such asymmetries are so significant that Akerlof (and all fifty states of the USA) believe government licensing is the most appropriate means of addressing them. Akerlof also seems to suggest that there are non-government (market) mechanisms that already exist to provide signals to consumers about the levels of quality of the professional services being provided, where that quality is assumed to depend only on professional training. Signally (Spence, 1973) here would mean the education certificate is a means by which the seller can signal to potential buyers that they will provide high quality services.

Indeed, it is because of the professional knowledge and judgment required for the provision of such services that an ordinary client would be unable to distinguish between the relative qualities of such professionals (Leland, 1979) or the services they provide (Arrunada, 2004). They would not be able to understand all of the available information needed to make informed decisions (Garoupa, 2011; p454). This asymmetry has a downward effect on the overall quality of services provided, to the detriment of individual consumers (Akerlof, 1970), (Law and Kim, 2005). The possibility of negative externalities that arise from the poor provision of services is used to justify regulation of the professions (Broscheid and Teske, 2003). Regulation is justified because regulatory bodies are assumed to have 'more information and expertise' than the average consumer (Maks and Phillipsen, 2005 as cited in Garoupa, 2011; p454).

The public interest theory has been criticised at a number of different levels. Hantke-Domas (2003) has questioned whether public interest is even a coherent, developed theory, although they seem to have ignored specific models of the public interest developed in the public administration literature, particularly public service motivation (Perry and Wise, 1990), public value theory (Bozeman, 2007 as cited in Andersen et al, 2012; p293) or public stewardship theory (Davis et al, 1997, as cited in Schillemens, 2013; p544). Broscheid and Teske (2003) have argued that public interest theory ignores the incentives of different interest groups to shape regulatory policies to their own ends, although they ignore the work of Bernstein (1955; p74-95).

A major challenge to the public interest rationale for professions regulation is its underlying assumption that government can adjust in an effective and low cost way for market failures (Hagg, 1997). Avery and Schultz, for example, highlight that the marginal benefit that arises from regulation to address information asymmetries may be lower than the marginal cost of the regulation (2007; p265). This criticism can most be associated with Public Choice academics, who have developed an alternative rationale to that outlined above. Despite such criticism, much public policy justification for professions regulation is still presented in terms of the need to protect the public for the potential effects of information asymmetry and the resulting negative externalities.

This second rationale for professional regulation identified in the literature can be thought of as private or self-interest. The private interest theory has three variants, each of which emphasis the role of interest groups in the formation of regulatory policy (Philipsen, 2009).

An early version of the private interest rationale was developed by writers such as Bentley (1908), Gray (1940), Fainsod (1940), Truman (1951) and Kolko (1965) and is known as 'capture theory' (O'Leary, 2010; p16). Originally developed in the field of economic regulation (but often assumed to apply to professions regulation), core to all conceptions of capture is that it involves the creation, maintenance or extracting of benefit from some form of monopoly established by public authority. Of course, even where a regulatory agency is captured, the behaviour of regulators who make and implement decisions may not be completely under the control of regulatees (Mitnick, 2011; p36), nor do regulators (even within a single agency) have homogenous interests.

Capture theory left a number of questions unanswered and lacked any empirical evidence in its support (Posner, 1974). The private interest rationale was then significantly developed by George Stigler in his 1971 article *The Theory of Economic Regulation*. Stigler's proposition is that regulation is a product to be supplied to those who most value it; this value is derived from effect of this product, which is to raise prices above competitive levels. Stigler suggested that the demand for

regulation is highest in industries where cartelisation (how firms would normally raise prices above competitive levels) is unfeasible or too costly.

The third variant of the private interest rationale has been developed by Public Choice academics, and it is this variant that this research seeks to examine. Public Choice is a school of thought in political science that seeks to apply economic principles to the study of non-market decisions (Mueller, 2003; p1). It is a theory of government. It is rooted in methodological individualism (Shugart and Razzolini, 2001; p xxii), examining the choices and actions of individuals and their aggregate impact on public policy choices.

Public Choice developed as reaction to a view of public policy as being in the 'public interest', a loosely defined concept with many variants; from a simple assumption that public officials work in the interests of ordinary citizens to a more complex model that postulates that competition between self-interested actors in the policy-making process ensures that the resulting policy is efficient and effective (Becker, 1976; p247).

Public Choice challenges this public-interest justification for regulation, and is perhaps the leading theory describing the relationship between regulator and regulated (Rubin, 2010; p555). It starts by making explicit the assumption underlying some of the 'public interest' hypotheses that government intervention is necessary to correct market failures, and that such failures can be corrected for at zero cost (Mueller, 2003; p4). Public Choice reveals that governments can fail too. Simply put, the Public Choice view of regulation is that it is a systematic transfer of wealth to those capable of influencing the policy process from those less capable. Public Choice theorists thus begin with a view of human rationality that places Public Choice within the Rational Choice Theory school.

2.3 Human agency and its role in the regulation policy process

Rational Choice Theory (RCT) is perhaps the dominant paradigm in political science (Ostrom, 1998; p2) (Parsons, 2005; p7), although to some extent it is misleading to

speak of rational choice as a single theory (Parsons, 2005; p9). In reality, there are many variant conceptualisations of human rationality that fall under the RCT banner (Sen, 2005; p5), and there are at least thirty models, theories and variants representing various fields within RCT (Herne and Setala, 2004; p68). This complexity grows even further when one considers that rational choice is just one of a family of rationality models (Ostrom, 1998). Indeed, it is possible to identify a large number of variations of rational actor models in the literature, depending on how 'thick' or 'thin', subjective or objective is the rationality proposed by each model. Such are these differences that much criticism of RCT comes from within the paradigm, with as much article space devoted to discrediting fellow rational choice theorists as to criticising non-rational explanations of human agency.

Despite these differences, there are three factors that unify these rationality variants. First, action is individually located. Rational choice is rooted in methodological individualism (Herne and Setala, 2004; p69) and therefore involves a focus on the agency of the individual human actor. It is assumed that action produces outcomes, that outcomes are not produced by endearing structures or culture (Lichbach, 2006; p112). Such action takes account of others; it is 'strategically interdependent'. Secondly, action is reasoned (Sen, 2005; p5); it is intended. Actors have preferences and some idea of the future state we want to achieve (Opp, 2013; p385). Some models assume that actors are self-interested utility maximisers; others do not (Herne and Setala, 2004; p73). We do, however, choose the behaviour we think is best for us (Opp, 2013; p12), we choose the best option available to achieve what we believe to be in our interest (Chong, 2000; p12). Perhaps the most difficult aspect of rational actor models is the third unifying element, that politics (including public policy) is a collective endeavor. It is not simply a case of 'totalling up' the outcomes of individually rational actions (Shughart and Razzolini, 2001; p5). There are many different interpretations of, and implications arising from, the collective nature of political decision making.

Given the large number of variants, each with slightly different assumptions about the nature, extent and situation of rationality, it is not surprising that there should be different interpretations of how this collective choice impacts on society, politics and public policy. It is beyond the remit of this research to detail and evaluate each of

these variants. It is worth highlighting the differences between Becker (1983, 1985 as cited in Mitchell, 1989; p286), who contends that social results are nevertheless relatively efficient, and other public choice scholars, for whom the collective choice, because it is choice without explicit price signals to guide voters and politicians, leads to oversupply of government services, rent-seeking behaviour and inefficiency. There is also a third variant, which states that although action at the individual level is intentionally rational, when aggregated, the resulting social order is often unplanned, unwanted and irrational (Langlois, 1986). Social order is therefore 'spontaneous order'; it is not reasoned or rational in the way that individual action might be considered. Social order results from human action, but not from human design (Boettke and Coyne, 2005; p151). For many in the field, it is this aggregating process and these social outcomes that should be the focus of social science analysis (Mises, 1949) (Levi, 2009; p127).

Although all rational actor models share these three elements, they differ in a number of aspects. It is perhaps easiest to conceive of these differences by plotting them on two axes, whose origin creates four quadrants. The vertical axis reads from 'thick' to 'thin'. 'Thick' forms of rationality assume self-interest whereas 'thin' forms assume action is reasoned or intentional, whatever the reason might be. Elster has identified five rationality variants on the thick-thin axis, ranging from pecuniary self-interest through to intended action. The other axis ranges between objective and subjective rationality (Balbus, 1971) or between 'human nature' and 'socially situated' rationalists (Lichbach, 2006). Objective rationalists believe that rationality is universal; that regardless of time or place, when faced with the same choices, rational actors will make the same decisions. Subjective rationalists believe that human decision-making is context-specific, that our actions are affected by norms (Chong, 2000), culture, and the institutions within which we are situated (Levi, 2009). These distinctions have important implications for this research, as much public choice literature assumes thick, objective forms of rationality. These implications are discussed later on in this part of the chapter.

2.4 Critical evaluation of full rationality

Being the dominant paradigm in political science, it is perhaps not surprising that rational choice has been subject to much criticism. I want to focus on three major criticisms often made of 'full' rationality, that it (a) is an ideal-type version and does not reflect how humans actually make real-world decisions, (b) that the core assumption of perfect knowledge is unrealistic because knowledge is tacit, contradictory, incomplete and because of fundamental uncertainty, (c) that the process of optimisation (whereby we use available information to choose the best option) is not feasible. As such, acting as 'fully rational Bayesian maximisers of subjective utility' (Selten, 1999; p2), even if possible, would not be reasonable in terms of (i) use of time and resources and (ii) likely outcome. As a result, full rationality under-estimates the complexity and variety of approaches to human decision-making, especially as it ignores human learning, ideas and creativity. In this section, I want to address each of these criticisms in turn and then introduce the concept of bounded rationality as a substantive critique of full rationality and as an alternative model of human agency.

2.4.1 Full rationality as an 'ideal-type'

A number of writers have suggested that idea of a fully rational individual is an 'unrealistic picture of human decision making' (Selten, 1999; p2) that fails to focus 'on the actual process of human actions' (Mousavi and Kheirandish, 2014; p1781). These criticisms draw on two lines of argument, one theoretical and one empirical. The first line of argument is that humans could not possibly meet all of the assumptions required of full rationality. These assumptions vary according to which model of rational choice is being discussed, but broadly all models encapsulate assumptions that we want to obtain some goal and that we choose the best option to do so, having considered the available information. This requires us to be able to identify and assess the available options, selecting and evaluating them, relative to each other and against appropriate criteria. It requires that we have an understanding of probability and risk and are able to make connections between actions and outcomes. It requires us to be able to gather, assess and use the

available information, and be able to identify when additional information is no longer important to our decision-making process. For many, this places far too many requirements on us as rational actors, requirements that we cannot, do not and (for some) should not meet.

It is worth raising here that a number of those working with rational choice do not claim that such models are representative of real-world decisions. Rather, they are **as-if** models (Gigerenzer, 2008; p5) that make predictions about human behaviour (Friedman, 1953; p30). They are predictions about outcomes, not the process by which decisions are made (Friedman, 1996 as cited in Jones, 2002; p278). They are 'as-if' models because they make predictions 'as-if' humans are fully rational, even though, in reality, the underlying assumptions bear little resemblance to the real-world. Such models do not include all of the features of our complex social world; rather, they are parsimonious. Such models focus on the essential features of a particular issue, situation or event. They are 'deliberately simplified' so to help us understand how actors might behave (Hindmoor, 2006; p2). As Boettke and Coyne argue, 'the parsimonious explanation will defeat the more complicated analysis that includes all the forces that will impact the situation under examination' (2005; p146). As long as such models are capable of predicting behaviour, they need not be concerned with real-world motivations and reasoning.

There are several problems with this 'as-if' argument. A number of scholars question the usefulness of 'as-if' models. Pleskac and Hertwig (2014) talk about the need to move 'from rational man to actual people' (p2001); Mousavi and Kheirandish argue that the 'mistake is to take this predictive model at face value and use its results as a benchmark to judge actual behaviour' (2014; p1781) and Selten (1990) argues that empirics in the 'tradition of deriving behaviour from abstract principles' is doomed to failure (p650).

Secondly, the convention of 'as-if' modeling to predict human behaviour is one that seems to be routinely violated by a number of academics working within field. A large body of empirical research portrays full rationality as accurate descriptions of how humans actually make decisions. For me, an example of this is the large body of research around the rationality of voting. From Anthony Downs (1957) onwards,

scholars have used the assumptions of full rationality not just to predict whether and for whom people will vote, but also to describe the decision-making process. When such predictions fail to reflect reality, amendments are made to the assumptions to include minimaxing as opposed to maximising behaviour (Ferejohn and Fiorina, 1974), rational ignorance (Somin, 2010) and expressive voting (Brennan and Buchanan, 1984).

This 'paradox of voting' is directly related to the second line of argument; the empirical evidence demonstrates that humans routinely violate these requirements. Drechsler, Katsikopoulous and Gigerenzer (2014; p184) suggest that it has been shown empirically that people routinely violate the assumptions of expected utility. Robert Aumann states that the evidence is that most actors are 'not in fact maximisers' (1997; p2) and that experiments 'indicate that people often fail to conform to some of the basic assumptions of rational decision theory' (p2). Frohlich and Oppenheimer (2006) suggest that actors do not display the consistency required by rational choice assumptions (p237), and often display preference reversals and other anomalies (p236) and go on to question the self-interested assumption inherent to some rational choice models (p236). And David Dequech suggests that people often hold multiple, sometimes conflicting, objectives (2001; p2) rather than the consistent and hierarchically ordered preferences assumed by rational choice.

From within the discipline, Elinor Ostrom has suggested that while rational choice is generally capable of making strong predictions about individual behaviour, particularly marginal behaviour in competitive situations (Ostrom, 1998), it is less helpful in other situations and experiments tend not to produce results predicted by the models. Parsons, writing from outside the discipline, has equally challenged whether rational choice has any predictive power (Parsons, 2005; p7) and Jones (2002; p277) has suggested that many of the predictions made by rational choice turn out to be wrong.

To some extent, those from outside rational choice exaggerate its lack of explanatory power. It is rather unfair to suggest that rational choice lacks empirical evidence. There is, for example, a significant body of such work in relation to regulation policy. Much of empirical work done by rational choice academics in regulation public policy

tends to be theoretical models of various two or three player games. This work, while interesting, is often dry, difficult to access and tends to lack any application to the real world of regulation policy. And while much of it produces results that are not predicted, that is in part surely the reason for undertaking such research - to disprove a theory is as important as providing evidence in support of one. It is disappointing that when such work leads to theory revisions, critics of rational choice suggest 'post hoc theorising' is taking place (Green and Shapiro, 1994)¹⁴. I would also suggest that there seems to be much more empirical work in rational choice than within the disciplines favoured by those critical of RCT's lack of empirical work.

2.4.2 Information problems

Choosing the best out of a range of available options requires rational agents to have information about each of those options. Actors are:

"...assumed to have knowledge of the relevant aspects of (their) environment which, if not absolutely complete, is at least impressively clear and voluminous."

(Simon, 1955; p99)

A number of scholars identify this as a core underlying assumption of rational choice models - that actors have access to lots of information about the options available to them and the extent to which these options will best achieve their desired outcomes. Gerd Gigerenzer, for example, identifies that in 'models of full rationality, all relevant information is assumed to be available' (2008; p81) and Vincent Ostrom, in discussing the neoclassical economics upon which rational choice heavily draws, identifies the 'fully informed actors' who are at the core of RCT models (Ostrom, 1997 as cited in Boettke and Coyne, 2005; p151). And those engaged in rational choice modelling often discuss differences between perfect and complete information and the actors being fully informed.

¹⁴ Indeed, an important aim of this research is to examine whether there is evidence of rent seeking and bureau-shaping in relation to five professions in the UK, or whether these theories need development and revision. This seems to me to be an important aim of empirical work in political science, and not something that should be criticised as 'post hoc theorising'.

There are two significant problems with this assumption when it comes to understanding real-world human behaviour. These are the problems of *complexity* and *uncertainty*. According to David Dequech, 'complexity is a complex term' (2001; p3). Indeed, J. Barkley Rosser, in papers in 1999 and with Marina Rosser in 2005, identifies many different definitions, meanings and forms of complexity and a number of theories that seek to describe and explain complexity. Thorstien Veblen was amongst the first scholars to argue that rational choice models failed to account for the complexity of human choice in a dynamic world, and the complexity of the human social world is a theme that has been addressed by a number of important writers, including Hayek and Mises (Boettke and Coyne, 2005; p147 and p150). But the development of complexity theory, and particularly an understanding of how the complexity of the social world shapes and is shaped by human decision making, owes much to Herbert Simon (Rosser and Rosser, 2005; p3). Complexity arises because the social world consists of a large number of parts that interact on many different levels (Simon, 1996 as cited in Dequech, 2001; p2). It arises because of the spontaneous order of the human social world; that individually purposeful action does not result in some fixed equilibrium system but rather is shaped by the unintended consequences arising when individually purposeful actions are aggregated. Rosser and Rosser go on to suggest that:

"..complexity can be seen as a, if not the, fundamental foundation for why people have bounded rationality...." (Rosser and Rosser, 2005; p3)

Complexity is core to a criticism of full rationality. It is core because information is complex, contradictory and often incomplete. It is core because this complexity, coupled with the large number of decisions that any individual makes at any given time, makes the kind of fully rational decisions expected of rational choice theory highly improbable given the time and resources available and because the environments in which we make decisions are dynamic, changing and unpredictable.

Uncertainty is the second significant problem with the assumption of fully informed actors in most rational choice models. Like complexity, there are different definitions and meanings associated with the concept of uncertainty, and various models that address how we as human beings deal with uncertainty. Indeed, Pleskac and

Hertwig suggest that how individual actors understand and deal with uncertainty is one of the greatest challenges in theorising about choice (2014; p2001). Uncertainty arises because there are a large number of decision points where information is simply not available, and we cannot fill these gaps in any way. This is not a question of the decision-maker not knowing or being unable to process the necessary information, or making a decision not to acquire that information. Rather, the information simply does not exist at the time of the decision. As Dequech suggests, 'fundamental uncertainty would still exist if people had superpowerful minds and computers' (2001; p9). That rational choice fails to account for fundamental uncertainty has a certain irony: fundamental uncertainty is the natural outcome of social order in a rational choice world. Social order is chaotically dynamic, it is constantly affected by individually rational decisions made every day by all of us that, when aggregated, result in unplanned and oftentimes irrational order. And because this order is essentially spontaneous, because we can never know what impact the aggregation process might have, we essentially create fundamental uncertainty.

To some extent, rational choice models do take account of uncertainty, but do only in so far as discussing uncertainty about given options. Probably the most important rational choice view of how we deal with uncertainty was provided in the 1950s by the American mathematician and statistician, Leonard Savage. Drawing on Savage's work, most rational choice models understand uncertainty as probability (Jones, 2002; p273) or, more specifically, as a subjective assessment of probability.

For me, there are two difficulties with this association of uncertainty with probability. First, many of the treatments presented in the literature imply that the options are fixed and known but that the probability of outcome is not. In the absence of objective probabilities about these different known and fixed options, rational actors generate subjective probabilities. So, for example, in an early critique of Savage's theory, Daniel Ellsberg (1961) provided a number of examples of choice options that would involve actors making subjective assessments of probable outcomes. Ellsberg quotes Shackle's (1955) cricket example in which the England and Australia cricket teams have agreed to throw a die to determine who will bat first in a test match. He then goes on to provide the example of an urn that contains 30 red balls, 60 black balls and an unknown quantity of yellow balls. An actor is asked to place bets on the

likelihood of drawing each colour of ball from the urn. Similarly, Gilboa, Postlewaite and Schmeidler (2009), in a paper which seeks to draw the limits of Savage's theory, pose the question 'will the US president be a Democrat in six years time?'

The difficulty with these examples (as both Gilboa et al and, to some extent, Ellsberg acknowledge) is that the level of uncertainty is to some degree containable. The actor may not know how many yellow balls there are in the urn, but she does know the size and shape of the urn and from this can make a reasonable guess as to the likely range of yellow balls it contains. Equally, the actor asked the question about the future US president may well know the party allegiance and term thus far served of the current incumbent and may also know that US presidents have been from one of two parties for at least the past one hundred years. In both cases, the options (yellow, red or black for the balls, Democrat or Republican for the president) are fixed. Even when not known, the list of options is predetermined (Dequech, 2001; p6). But fundamental uncertainty implies that the options themselves are not known by the decision maker at the time of the decision because they simply do not exist. That is to say that 'some of the alternatives and outcomes, in addition to probabilities, can be unknown' (Mousavi and Gigerenzer, 2014; p1672).

The second issue with this view of how we deal with uncertainty is that the empirical evidence suggests that, in real-world situations, people have 'great difficulties in working with probabilities, assessing risk, and making inferences where uncertainty is involved' (Jones, 2002; p273) and that 'everyday experience suggests that risky decisions are rarely based on explicit probability judgements' (Selten, 1999; p12). Indeed, Gilboa et al suggest that there may be many occasions where it would not be rational to satisfy the Savage axioms because 'in some situations, *there may not be a perfectly rational choice at all*' (Gilboa, Postlewaite and Schmeidler, 2009; p288)(italics in original).

One of the consequences of complexity and uncertainty is human creativity. This expresses itself in many ways, but significantly for rational choice, creativity means that we sometimes create a new option, a new way of achieving our goals, rather than simply picking between those that are currently available. Such creativity is often not planned but can happen just by accident. Creativity leads to change.

Creativity often occurs because of a lack of necessary information from which to make decisions. Herbert Simon (1997) was the first to identify a limit to rationality; we cannot always identify which option is in our best interest, as we do not have the necessary experience or information to value each of the options, whose outcomes lie in the future. RCT generally assumes that we can process all of the necessary information but accepts that we may have imperfect or incomplete information when we make decisions. This enables us to make decisions about whether the costs of acquiring additional information are worth the likely benefit to our decision-making of having that information.

2.4.3 Optimisation

A core assumption to most rational choice models is that as rational actors, we consider the options available and select the one that best achieves our goals, and thus engage in utility maximisation or in optimisation (that is, using the optimal strategy to achieve our intended outcome).

Consider my journey from home to college, which I make perhaps once or twice a week during term time. I have a number of different possible ways of making this journey (options). I can take the tube, take a bus, walk or cycle. I could take a cab. These are relatively fixed options. How do I choose between these options? Price would be an obvious first criteria to make this decision. I know that the tube costs £2.90 in each direction and the bus £1.50. The walk and cycle (assuming I already have a bike and count this as a sunk cost) would be free. A cab would cost some £12. This information is 'objective' and publicly available. But I might also take into account the time taken to travel and also the comfort levels involved in each mode of transport. My decision then involves considering the information set out in table 5.

	Tube	Bus	Walk	Cycle	Cab
Cost	£2.90	£1.50	£0	£0	£12
Time	25 mins	45 mins	75 mins	30 mins	15 mins
Comfort	3	2	2	1	5

Table 5: Selecting the optimal means of traveling to college (single journey)

There are several points to note about this evaluation. The time taken to make the journey is dependent on a number of different factors. There may be signal failures on the tube or an accident that delays my journey. There may be congestion that delays the bus. Of course, there may be information available to help me account for these. The Transport for London website may display information about expected journey times and there may be traffic information on the local news. But at what point does the time and effort of gathering this additional information outweigh the benefit of having it? And will I know that before I undertake this extra search? What happens if I discover no delays but have spent an hour gathering this information? And how do I account for the likelihood that the delays may be resolved by the time I make my journey? I could take account of these using Savage-type subjective probability calculations.

The comfort criterion is a quantitised metric of what is really a qualitative, subjective judgement. In the example above, I have assigned comfort levels between 1 and 5, with 0 being the lowest. Of course, these comfort levels are not fixed and depend on a number of factors – the weather, the level of pollution and also the time taken (being on a bus for two hours is less comfortable than being on the same bus for 45 minutes). There is also a lack of ‘common currency’ between these criteria (Gigerenzer, 2008; p56) – how do I turn each assessment into a comparable metric? And how do I ‘trade off’ gains in one criteria (comfort, say) against losses in another (price, for example). Standard utility theory suggests that such trade-offs are straightforward (Kahneman and Tversky, 1979 as cited in Jones, 2002; p274).

Given that I travel to college perhaps twice in week during term time, rational choice models assume I make my decision of how to get to college **as if** I make these calculations perhaps some one hundred and fifty times in a year. There is also the case that I may make a decision optimally, yet the outcome may be less than optimal. I may, having searched for and assessed the available information, decide a particular route, only for something unexpected and unplanned for to detrimentally affect my journey. And these decisions are just some of the thousand I make each day, each week and each year, many of which are more important in terms of my interests, are more likely to be one-off in nature or have a greater impact on my life.

Rational choice theory is not the only way in which rational actors make decisions and not all human decisions are made as rational actor models would suggest. Rational choice theory does not adequately explain how and when rationality is **not** utilised to make decisions, when tacit knowledge, creativity or habit might provide a better causal explanation. It also fails to account for luck; some actors may benefit from a regulatory policy simply by luck, and not because of any agency on their part. This is fundamental because any social order under examination may not only be the outcome of a number of individually rational actions; some of the underlying individual actions may well be nonrational. It is tempting to suggest that we make a rational decision about whether to make a rational or otherwise decision, though such a proposition is dangerously close to the 'post hoc theorising' attacked by Green and Shapiro (1994) or of generating a tautological argument. I would like to think that human beings are more creative and complex than an application of rationality to **all** human action would suggest.

2.4.4 Bounded rationality

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In the example of travel times I gave above, rational choice approaches assume that I have the time, information and inclination to decide between the various options available. Indeed, the more time and information I have to make decisions, better decisions are made (Mousavi and Gigerenzer, 2014; p1783). In reality, having made the same journey many times, I know that, as a general rule, taking the tube works well for me. I may want to choose the best option, but the task assigned to me by rational choice models in terms of collecting, assessing and evaluating the information and calculating the best choice seems to outweigh the benefit I may gain from having made an optimal choice.

It is at this stage that I want to introduce the concept of bounded rationality. I have already drawn on this concept in developing the criticisms of full rationality I outlined in sections 2.4.1, 2.4.2 and 2.4.3 above. There are, of course, wider criticisms of rationality and human agency that I could have been brought to bear, but as I have explained in the methods chapter, the models I examine in this research are rooted

in methodological individualism and thus I have focused the criticism from such an approach. Bounded rationality is such a criticism.

Bounded rationality is a concept first developed by Herbert Simon, in his ground-breaking book, *Administrative Behaviour* (1945)(1997). Bounded rationality emerged as a critique of models that assumed fully rational decision-making (Jones, 2002; p272) and is intended to be a way of studying how 'real people make decisions in the real world' (Mousavi and Gigerenzer, 2014; p1783). It is often described as an alternative (Dequech, 2001; p1)(Dreschsier, Katsikopoulos and Gigerenzer, 2014; p184) or competitor (Jones, 2002; p279) to fully rational models. Bounded rationality has also been described as one of the 'family' of rationality models (Ostrom, 1998; p3). Core to the concept of bounded rationality is Herbert Simon's observation that:

"...human behaviour is intendedly rational, but only limitedly so.." (Simon, 1997; xxiv)

This is the principle of intended rationality (Jones, 2002; p272). Actors have interests and pursue them, but are unable to do so fully (Rosser and Rosser, 2005; p11). The two questions that follow this principle, and Simon's statement that human behaviour intends to be rational but is somehow prevented from being so, are (a) what are the limitations we face as human beings that prevent us from being fully rational and (b) if we are not fully rational, how do we as human beings make decisions?

Simon's critique of full rationality arises from the requirements that such decision making places in rational individuals. He summarises these as:

"..a complete and consistent system of preferences that allows him always to choose among the alternatives open to him; he is always completely aware of what the alternatives are; there are no limits on the complexity of the computations he can perform in order to determine which alternatives are best; probability calculations are neither frightening or mysterious to him." (Simon, 1997; p87)

Likewise, Gerd Gigerenzer suggests that fully rational individuals are omniscient, that is they have perfect knowledge of the past and present; that they are omnipotent, in that they have unlimited computational power to 'deduce the future from perfect

knowledge' of the past and present (2008; p4); and, that they are omnipresent, in that they keep preferences in the same order (Mousavi and Kheirandish, 2014; p1781).

In the commentary to chapter five of *Administrative Behaviour*, Simon sets out what he describes as the 'limits of rationality' (p93). He argues that 'complete rationality is limited by a lack of knowledge' (p94). As outlined in section 2.4.2, this lack of knowledge arises because of complexity of the social world (Dequech, 2001; p3)(Jones, 2002; p272). As Herbert Simon points out:

"It is obviously impossible for the individual to know all his alternatives or all their consequences, and this impossibility is a very important departure of actual behaviour from the model of objective rationality." (Simon, 1997; p77)

Because of this, we cannot 'induce future consequences from a knowledge of present circumstances' (p94). Knowledge problems also arise because of fundamental uncertainty (Dequech, 2001; p2). Complexity implies that an optimal solution exists but the decision maker is unable to identify it (Dequech, 2001; p2) or determine it (Gigerenzer, 2008; p56). It arises because the 'number of alternatives he must explore is so great, the information he would need to evaluate them so vast that even an approximation to objective rationality is hard to conceive' (Simon, 1997; p92). In contrast, fundamental uncertainty implies that no optimal solution exists because 'unimagined and unimaginable new states may occur in the future, either through the intended or unintended consequences of people's actions' (Dequech, 2001; p2-3). Because actors are faced with incomplete and imperfect information, and cannot know or predict the consequences of any particular action, uncertainty arises (Pennington, 2011; p3). And because of these knowledge problems, we are 'unable to draw on relevant information, (have) difficulties coping with uncertainty, and the need to adjudicate among competing interests (Smith, 2014; p270).

There is, however, some controversy and perhaps lack of understanding about the nature of this limitation. Several writers suggest that the lack of knowledge is related to our 'limited mental abilities' (Dequech, 2001; p3) or cognitive limitations (Gigerenzer, 2008; p76)(Selten, 1999; p3). Bryan Jones claims that the notion of

bounded rationality has been confused with our limited ability to undertake the calculations required by fully rational models, and goes on to state:

“Nowhere in Administrative Behaviour or elsewhere in the work of Simon...is the lack of calculation abilities cited as central to bounded rationality” (Jones, 2002; p272)

This is not entirely accurate. On page 117, Simon states that the ‘limits of rationality have been seen to derive from the inability of the human mind to bear upon a single decision all the aspects of value, knowledge, and behaviour that would be relevant’ (Simon, 1997; p117). He also states that:

“Human beings, like most other complex organisms, can only deal consciously with one or a very few things at a time.....The bottleneck of attention means that we operate largely in serial fashion: the more demanding a task, the more we are single-minded.” (Simon, 1997; p90)

On pages 95 and 96, Simon goes on to postulate that:

“...the mind cannot at a single moment grasp the consequences in their entirety. Instead, attention shifts from one value to another with consequent shifts in preference.” (Simon, 1997; p95-96)

Here is one of the key differences between the fully rational and the boundedly rational actor - adaptation. In rational choice models, preferences are assumed to be fixed, mutually exclusive and ranked. But in bounded rationality, preferences can be dependent on one another and the environment within which decisions are made. This is the principle of adaptation (Jones, 2002; p273). Different options are ‘not given but found one after the other in the search process’ (Selten, 1999; p2). The alternatives are not ‘previously given to the decision maker, who thus needs to adopt a process for generating alternatives’ (Dequech, 2001; p3). Thus, boundedly rational actors innovate, they not only discover options that are hidden by complexity but create new alternatives, a possibility that David Dequech argues was not foreseen by Herbert Simon in his original conception of bounded rationality (Dequech, 2001; p13).

Indeed, one of the difficulties with bounded rationality is that it is not a full developed, comprehensive theory (Aumann, 1997; p3)(Selten, 1999; 3). Simon's approach was developed as a critique of the neoclassical conception of rationality (Jones, 2002; p272) and proposed an alternative model of rational choice (Dequech, 2001; p911). His approach has largely been ignored by Public Choice academics (Jones, 2002; p271) and his proposition is often misunderstood. While bounded rationality refers to the non-optimising, adaptive behaviour of real people, it is not a concept that can be precisely defined (Selten, 2002; p15). There are at least three different ways of conceptualizing bounded rationality (Dreschsler, Katsikopoulos and Gigerenzer, 2014; p192), which Gird Gigerenzer identifies as optimisation under constraints, cognitive illusions and ecological rationality (Gigerenzer, 2008; p81).

Perhaps modestly, Gigerenzer claims that Herbert Simon 'opposed the first of these, tolerated the second and embraced the third' (with which Gigerenzer himself is credited with developing). Certainly, in terms of understanding how rational agents make decisions given the implications of their bounded rationality, the model put forward by Gird Gigerenzer is the most developed and the closest to Simon's conception of bounded rationality. It is, however, at a slight variance with Simon's work. At times, *Administrative Behaviour* (and certainly the version put forward by Bryan Jones, who suggests that computational abilities are not a constraint envisaged by Simon) can be read to mean that, if it were not for informational constraints, human beings could be fully rational. Certainly, this is the approach taken by Stigler (1971) and others who propose a decision process of *optimisation under constraints*, whereby rationality is bounded by the constraints imposed by costs of gathering and processing information and by our limited mental abilities (Dequech, 2001; p4). This would seem to add further complex calculations to those already required by optimisation, because actors need to calculate the optimal point at which to stop collecting further information. However, while Phillippe Mongin (1988, as cited in Dequech, 2001; p4) left open the idea of optimising under bounded rationality, both Jones (2002; p274) and Gigerenzer (2002; p81) reject this.

The second interpretation of bounded rationality identified by Gird Gigerenzer is that of cognitive illusions, with which he credits Rabin (1998) and associates with 'the

study of cognitive limitations and systematic errors in judgement and decision making' (Gigerenzer, 2002; p85). Like optimisation under constraints, this interpretation accepts full rationality as a model of human decision making. It compares actual decisions against the ideal-type of full rationality. This seems to view full rationality as an **as-should** and not **as-if** model of human decision making; a normative position rather than a modelling approach. It also seems to view bounded rationality as essentially irrational, as something that does not conform to the norms of full rationality. This interpretation is something which is rejected by a number of authors (for example, Selten (1999; p4) and Gigerenzer (2008; p86)). Indeed, as Bryan Jones has argued:

"A model of human decision-making based in bounded rationality and behavioural choice leads to very different outcome predictions that either think or thin rationality."
(Jones, 2002; p280)

Both optimisation under constraints and cognitive illusion interpretations of bounded rationality appear to accept that full rationality is and should be possible. But there is a third interpretation and development of bounded rationality that rejects this premise. It attempts to model how we make decisions in the real-world and not as 'optimisation and deviations from optimisation' (Drechsler, Katsikopolous and Gigerenzer, 2014; p193). This interpretation is ecological rationality and is largely associated with the works of Gerd Gigerenzer.

Before discussing ecological rationality in more depth, it is worth first identifying how Herbert Simon envisaged we make rational decisions. As already noted, Simon starts from a principle of intended rationality (Jones, 2002; p272). This intended rationality is affected by uncertainty and in relation to the complex environment we inhabit. But intended rationality has a number of different levels; be they conscious, deliberate or habitual (Simon argues that habits are rules and routines that might themselves be rational and will serve their purposes effectively and also 'conserve scarce and costly decision-making time and attention' (Simon, 1997; p89)).

As previously noted, in most rational choice approaches, all alternatives are considered before a choice is made. Herbert Simon suggested that, in reality,

alternatives are often examined one at a time; when a satisfactory option is identified, it will be selected (Simon, 1955; p110), even if other alternatives have yet to be evaluated. An option is considered satisfactory if it meets or exceeds the 'aspirational level' on the goals they wish to achieve (Jones, 2002; p274). This aspirational level may change during the decision process and is related to the number of available alternatives (Simon, 1955; p111). This means that rational actors can deal with multiple goal, even contradictory goal, problems without the need to identify a complete preference order for all of the available alternatives (Selten, 1999; p7). And because of this sequential (rather than concurrent) evaluation of options, and because a satisfactory option may be selected before a 'better' option is evaluated, Simon conceived the term 'satisficing' as opposed to maximising behaviour. In selecting and evaluating these options, boundedly rational actors use 'rules of thumb' to make decisions. As Robert Aumann has noted:

"Ordinary people do not behave in a consciously rational way in their day-to-day activities. Rather, they evolve 'rules of thumb' that work in general, by an evolutionary process.....or a learning process.....If they work well, they are fruitful and multiply; if they work poorly, they become rarer and eventually extinct."
(Aumann, 1997; p7-8)

It is these 'rules of the thumb' that are at the centre of the concept of ecological rationality. Core to understanding ecological rationality is that full rationality is more than just difficult or impossible but is actually undesirable and unnecessarily complicated. In this account, even taking account of uncertainty and the complexity of the environment which we inhabit, the informational demands of full rationality are too high. As Peter Todd has suggested:

*"...the human mind makes many decisions by drawing on an adaptive toolbox of simple heuristics, **not because it is forced to do so by cognitive limitations**, but because these fast and information-frugal heuristics are well matched to the challenges of the past environment."* (Todd, 2002; p52)(my emphasis)

Here, a heuristic is a strategy, a means of consciously or unconsciously making decisions. In complete contrast to the process of decision making assumed in full

rationality, heuristics involve searches for the minimal level of information needed to solve specific problems (Gigerenzer, 2008; p22)(Todd, 2002; p52). It does not involve sophisticated, demanding calculations (Drechsler, Katsikopoulos and Gigerenzer, 2014; p184). They are tools that we have learnt and have evolved over time (Mousavi and Gigerenzer, 2014; p1672). Because they involve minimal information, heuristics enable us to make decisions despite the complexity and uncertainty inherent in the social world.

Pleskac and Hertwig (2014) provide examples and empirical evidence in support of such fast and frugal heuristics and how they help rational actors deal with uncertainty. They propose a risk-reward heuristic that exploits the statistical regularities or structure of the gambling environment – it allows actors to assume that the risk and reward are inversely related (that is, the greater the reward, the lower the probability of the reward outcome). They suggest that evidence of this heuristic directly contradicts Savage's axioms, which assumes that the decision-makers subjective assessment of probability is formed independently of payoffs (Pleskac and Hertwig, 2014; 2012).

This raises the question – if the risk-reward heuristic is ecologically rational in environments 'in which there is an inverse relationship between payoffs and probabilities' and should not be used (would not be rational) in situations where there is a positive relationship between the two, how do we as rational actors identify such situations? Gigerenzer suggests that heuristic selection is largely unconscious (2008; p38), though we may consciously use specific heuristics (Mousavi and Gigerenzer, 2014; p1673), but this seems to replace one black box with another. For me, this is one of the significant gaps in the ecological rationality literature, although it is one that Gigerenzer has acknowledged. He suggests:

“A number of heuristics are now known and are being studied in detail....The next task is to model how people choose between heuristics, deliberately or intuitively, because there are often several possible heuristics for one problem...” (Gigerenzer, 1999 as cited in Mousavi and Kheirandish, 2014; p1783).

2.5 Rent-seeking and bureau-shaping behaviours

It is here that Public Choice theory of rent seeking should be introduced. The term was first coined by Ann Krueger in 1974, which George Tullock claims built on a concept he set out in a 1967 (Tullock, 1993; p19)(although Hindmoor (2006; p156) and Alves & Meadowcroft (2014; p854) both suggest that much of what is now called rent seeking was identified by Hayek in his 1942 work, *The Road to Serfdom*). Rent seeking is the process by which individuals, groups or organisations seek to maximise profits by capturing economic rents. In this sense, a rent is defined as:

“....that part of the payment to an owner of resources over and above that which those resources would command in any alternative use. Rent is receipt in excess of opportunity cost.” (James Buchanan, 1980; p3)

In much of the economic literature, the social costs of monopolies, a type of market failure where there is only one (or a handful) of producers who can increase prices and reduce output, thereby increasing profits at welfare cost to consumers. Key to understanding rent seeking is that governments can create monopolies, and that this incentivises producer groups to lobby government to create such monopolies. Such monopolies involve a transfer of benefit from consumers to producers, through the monopoly profits. But it is not the extra profits associated with the monopoly that are the social waste associated with rent seeking. This waste is generated through costs associated with lobbying by professional interests for regulation. In effect, this exaggerates the social costs of regulation (Hagg, 1997; p346).

In relation to professions regulation, rent seeking is the process by which professional bodies lobby government to introduce some legal restrictions on by whom, when and how professional services can be delivered. A number of studies (both generic and profession-specific) have argued that such lobbying is pervasive and often successful. As Law and Kim state:

“The dominant view today is that the regulatory licensing process has been captured by industry to erect entry restrictions for its own benefit. Studies typically find that

regulation is correlated negatively with entry, positively with earnings, and that the occupation being regulated is an important constituency in favour of regulation."

(Law and Kim, 2005; p724)

Law and Kim's assertion that professions regulation leads to higher earnings is important, and one that is common in much of the literature around this field. Kleiner and Krueger (2008) found similar evidence in relation to occupational licensing across the United States, and other studies have also reported such findings. But it is important to be clear that the increase in earnings resulting from 'social closure'¹⁵ is not the social waste that results from rent seeking. These are the economic rents, a simple transfer from consumers to producers over and above that which producers should expect in a perfect market. Rather, the social waste associated is the expenditure of resources by professional interest groups to lobby for the introduction of entry or practice restrictions that constitutes rent seeking.

Since the publication of Anne Krueger's 1974 article *The Political Economy of the Rent Seeking Society*, there has been a substantial academic industry of economists, political scientists and management scientists who have sought to estimate the effect of rent seeking on economies. Much of this research focuses on the United States and a number of developing nations: India (Krueger's original article), China, Bolivia, Vietnam, the Philippines, Africa and Ghana have all been subjects of academic interest, as have inheritance laws, fisheries, cable TV regulation, food safety, banking and air cargo services (Hindmoor, 2006; p160) .

Some huge figures have been produced on the extent of economic rents resulting from rent seeking. Of course, not all of these costs can be accounted for by the rent seeking behaviours of professions, the costs also relate to tariffs, import and export licenses and other restrictions on trade. And there are also a number of significant issues with the rent seeking thesis, both in general and in relation to how it would applied to the field of professions regulation in the UK.

¹⁵ The term used by Freidson (1970) to describe the barriers established to free entry to a profession, such as education and training requirements.

The first of these issues relates the timing of rent seeking behaviour in the overall regulatory policy cycle. Much of the literature around rent seeking focuses on the activities of professions seeking the introduction of statutory regulation. However, all things being equal, rents are created not by the introduction of regulation per se but through the establishment and development of entry and conduct rules. This distinction between primary and secondary regulation is one raised in the policy analysis literature, and it is disappointing that public choice academics have not addressed this issue. This is an important distinction for two reasons. First, the introduction of regulation is a legislative process which involved politicians and is generally a 'one-off' process. The establishment of entry and conduct rules is generally a regulatory process undertaken by the regulatory agency itself, and is often an ongoing process. These differences have important implications in terms of the transaction costs and likely outcome of the rent seeking process.

The issue of rules and standards of entry to a profession raises the next significant issue: what counts as rent and what counts as rent seeking? In most areas of professions regulation, state intervention is the final part of a long process of establishing professional identity, rules, entry requirements, education and training programmes and professional norms. In many cases, statutory regulation is preceded by long periods of some form of voluntary regulation, generally undertaken by a professional body. As I have already highlighted, the introduction of statutory regulation for the medical profession involve the replacement of over twenty separate voluntary licensing and certification arrangements, many of which were adopted by the new regulatory body. So how much of this work counts as rent seeking?

To count all of it as rent seeking behaviour would be to ignore the wider contribution such work makes to professional identity and professionalisation. Indeed, there are a number of further implications of whether the development of rules and standards by professional bodies counts as rent seeking behaviour. A small number of studies have suggested that, while consumers may devise lower and simpler entry restrictions, they nevertheless want to see such restrictions in place. Meehan and Benson, for example, found that requirements for entry into the private security industry in US states tend to be relatively strict when requirements are controlled by

the industry and that different, often lower requirements are set when regulator boards are controlled by police or non-specialised agencies (Meehan and Benson, 2015; p162). Using data on medical licensing requirements across the United States between 1986 and 1993, Broscheid and Teske (2003; p445) found that licensing boards with lay majorities tended to have simpler, education-based licensing requirements and boards with profession majorities had requirements that were more complex and more difficult to justify in educational terms. And Windholz and Hodge (2012; p213) make a wider point and highlight that professions regulation may increase because of public expectation.

Not only does it seem that consumers may want entry restrictions in place (albeit it lower, justified and less complex restrictions), it would be wrong to assume that none of these standards has any beneficial impact for consumers. Indeed, Meehan and Benson (2014; p2015) suggest that any empirical relationship around entry restrictions imposed could be consistent with both public interest (reducing the costs of uncertainty arising from information asymmetries) and private interest (rent seeking behaviour) explanations and Law and Kim suggest that:

“..regulation may increase the earnings of professionals and be sought by the profession itself, not because it limits competition at the expense of efficiency, but because it improves the quality of services that consumers expect to receive” Law and Kim, 2005; p725)

Similarly to Meehan and Benson, Law and Kim go on to suggest that much of the empirical evidence can be presented to support either public or private interest justifications of professions regulation.

One of my criticisms of the theory of rent seeking is its underlying assumption that regulation is a zero sum gain: that is, that the impact of regulation is to increase prices above competitive levels and that this benefits the regulated profession at the expense of consumers (rent is a transfer cost). This does not account for the likely reduced information costs for consumers resulting from regulation (costs associated with assessing whether a provider has appropriate skills and experience necessary, choosing between providers and assessing the quality of the provider's work), or any

other benefits that might accrue to consumers that might be reflected in an above market price for such services.

The third conceptual issue has a direct implication on the ability to empirically test whether rent seeking has occurred. Evidence of rents alone is not sufficient to demonstrate that rent seeking behaviour has affected prices. Fundamental to rent seeking is that professions have actively lobbied for regulation that subsequently creates rents. A key assumption underlying this theory is that professional interests here act in an objectively rational manner: for me, that means that to empirically demonstrate rent seeking behaviour, it is necessary to demonstrate that individuals have calculated the benefits of collaborating in a professional body as opposed to individually, and have also calculated that the costs of rent-seeking would be outweighed by the rents created and that this would further their interests more than either alternatives such as cartelisation or competitive profits. It also over emphasises the size and economic weight of many professional bodies. The costs of organising such political pressure would be very high (Meehan and Benson, 2014; p100). Much of the lobbying work undertaken by professional bodies is not done through paid lobbyists or public relations specialists. It involves individual professionals, working on a voluntary basis for their professional body and often without much insight into how the political process works in the UK. Rent seeking expects a lot from professions. It also fails to account for the possibility that individuals in these professions are boundedly rational in the Simonian sense. This research therefore postulates a number of expectations in relation to rents, to be empirically explored.

Finally, a core assumption of many of the studies of rent seeking in professions regulation is that rent being sought is economic in nature and, specifically, is higher earnings. For me, this ignores three ***institutional aspects of professions regulation*** and how it incentivises groups to seek statutory regulation. Statutory regulation is a 'badge' of membership of a profession (Kaye, 2006; p105). It signals that the occupation has achieved a certain status, a level of specialism, expertise and knowledge and, for individuals within the group, a means by which they signal their membership of a professional organisation and qualifications. Statutory regulation is therefore an important part of identity and, as Wilensky (1964; p137)

believed that 'many occupations engage in heroic struggles for professional identification'.

Secondly, occupational groups increasingly work in multi-profession settings. Although most pronounced in healthcare, such multi-profession settings are increasingly important in a number of different areas. In law, for example, barristers and solicitors will work alongside paralegals, legal executives, conveyancers and notaries public and in architecture, architects will work alongside architectural technicians, structural engineers, civil engineers, surveyors and a large number of construction occupations. Such multi-profession settings will involve individuals regulated in a number of different ways, from statutory regulation through to voluntary or even unregulated, interacting with each other. I would suggest that working alongside professions that are statutory regulated will incentivise other occupation groups to seek such regulation to ensure their relative status. It is an important part, not only of how a professional group perceives itself, but also how other groups perceive it. Because, as Noordegraaf argues, many groups 'face increasing pressures to professionalise' (2007; p761).

Finally, the relationship between government and professions is considerably more complex than the rent seeking model infers and this complexity directly constrains the ability of professions to use regulation to seek economic rents. Many UK professions are not just regulated by government; they are also trained and then employed by government. Teachers, healthcare professionals and others see their wages determined through collective bargaining arrangements and subject to overall government funding constraints and thus have limited abilities to use the introduction or changes to entry requirements to increase economic rents. For example, Propper and Britton (2012) used data on 3000 schools involving over 200,000 teachers in England and concluded that:

"Teacher wages are commonly subject to centralised wage bargaining. This results in flat teacher wages across heterogeneous labour markets and means teacher wages will be relatively lower where local labour market wages are high." (Propper and Britton, 2012; p1)

Carol Propper is a professor of economics and public policy and has investigated the impact of centralised wage bargaining on a number of regulated professions, including teachers and nursing, and also on public sector performance. There are a limited number of other studies in the UK context and most examine the global impact of regulation, without distinguishing between public sector and private sector employment. In the largest study of occupational regulation in the UK, Forth et al (2011) examined the impact of the introduction of regulation on wages, using data from the Labour Force Survey. Their analysis focused on five occupations which experienced a change in their regulation status over the period 2001-2010 (security guards; care workers; social care managers; childcare workers and automotive technicians).

John Forth and his research team identified an increase in the wages amongst security guards and a rise in qualification levels and job related training among care workers. Forth et al found no evidence of any effects of regulation for childcare workers and automotive technicians. Two issues should be noted with this study. First, as I identify in section 2.4, I would suggest that using the Labour Force Survey data may over-estimate the size of regulated groups. Secondly, as well as failing to distinguish between public and private sector employment (and thereby controlling for the effect of centralised wage bargaining), the study also fails to distinguish between profession and occupation regulation, even though the authors recognise that:

“Professional occupations are the most likely to be regulated, and the most likely to be subject to licensing. They are followed by process, plant and machine operatives – a group which includes taxi drivers, HGV drivers and others requiring transportation licences..... In contrast, only a small minority of jobs are estimated to be regulated (in any form) within....sales occupations, skilled trades, personal service occupations and elementary occupations.” (Forth et al, 2011; p88)

2.6 Bureau-shaping model

The second Public Choice model that is relevant here is that of bureau-shaping. This is a theory that recognises that the profession is not the only interest group involved in regulation policy; policy makers are also involved, and they too work to further their self-interests.

2.6.1 The budget-maximising bureaucrat

Traditionally, the self-interest of civil servants is seen to be to maximise their budgets (to achieve higher pay and greater status) (Niskanen, 1974). Niskanen posits two theses about rational civil servants. First, he identifies the relationship between civil servants and their political overseers as a bilateral monopoly – the seller (civil servant) sells her services (policy advice) to politicians and in turn politicians (the buyer) only buys services from the relevant civil servants. The relationship is also subject to principal-agent problems. Politicians are unable to hold civil servants to account because of lack of time, information and understanding (Cope, 1994; p700). Niskanen argues that civil servants prepare their budgets as a total price and that politicians are ‘a passive sponsor which knows that the budget is prepared to grant for a given quantity of services but does not have the incentive or opportunity to obtain information on the minimum budget necessary to supply it’ (1974; p17). Civil servants can disguise costs and thereby oversupply, allowing them to maximise the size of their budgets (Matthewson, 1996; p138).

It is this second tenet of Niskanen’s thesis that is core to the discussion here. Because Niskanen posits that civil servants will seek to maximise the size of their budgets, and he provides a number of variables in the utility function of such civil servants, including salary, reputation, power and patronage (Blais and Dion, 1990; p656). As such, a civil servant’s utility is a function of her department/agency’s budget (Goodin, 1982; p24).

This budget-maximisation theory has been heavily criticised, not least because of the lack of any empirical evidence to support it (Parsons, 2005). Today, even the most

committed of public choice scholars do not argue that bureaucrats are budget maximisers (Hindmoor, 2006; p129). Several commentators have questioned whether civil servants would seek higher budgets, suggesting job security (Peters, 1975, as cited in Blais and Dion, 1990; p658) and other non-material interests. A significant criticism, and one directly relevant to this research, was put forward by Patrick Dunleavy in his 1991 book, *Democracy, Bureaucracy and Public Choice: Economic Explanations in Political Science*.

2.6.2 The bureau-shaping bureaucrat

In his seminal book *Democracy, Bureaucracy and Public Choice*, Patrick Dunleavy postulates a model that may help explain how and why there has been such an increase in the number, size and budgets of regulatory agencies. Dunleavy's **Bureau Shaping** model was originally set out in an article in 1985 and the concept further developed by Dunleavy in his 1991 book. Further variants have been suggested by Oliver James (2003) and Stephanie Hoopes (Dowding and James, 2004).

The bureau-shaping model was originally conceived as a criticism of Niskanen's budget maximiser hypothesis, but I argue later in this section that it should be seen to complement and further develop Niskanen's thesis. Dunleavy's first insight is that budget maximisation is a **collective** strategy; Dunleavy rejects Niskanen's implicit assumption of an all-powerful agency head and instead suggests that successful budget maximisation requires a coalition of senior civil servants to agree on, and bargain for, budget increases (Dollery and Hamburger, 1996). Secondly, Dunleavy suggests that the utility payoffs of budget increases vary by rank and type of civil servant. Indeed, Dunleavy suggests that budget increases tend to benefit low level staff and not senior civil servants, whereas senior civil servants are most likely to be successful in gaining incremental increases in budgets (Dunleavy, 1991). As such, it may not be rational for a senior civil servant to lobby for a larger budget as this may not be in her self-interest. Instead, the interests of senior civil servants are work related and non-pecuniary; they include closeness to policy and power, avoiding routine management and operational responsibilities, high levels of discretion and restricted hierarchy (Dunleavy, 1991). Where individual strategies are unable to

increase these aspects of senior civil servant work areas, they will act collectively to focus their agencies into smaller policy units and hive off managerial or service delivery functions; in effect, to 'shape' the agencies within which they operate.

The third component of the Bureau Shaping model is that the extent to which budget maximisation or bureau-shaping strategies will be pursued is affected by the institutional framework of the agencies within which they work. As such, the bureau shaping model is an institutional rational choice model; this typology defines the institutional environment in which actors operate (James, 2003). In addition to their rank or position within the agency, and variations over time, Dunleavy postulates that differences in agency form and function, and in budget composition, will incentivise and constrain the extent to which civil servants engage in budget maximisation or bureau-shaping strategies. He identifies five basic types of government agency: (a) delivery agencies (b) transfer agencies, which handle transfer payments (benefits, for example) from government to citizens or firms (c) contract agencies, which manage research and development, building or service contracts (d) control agencies, which manage funding grants to other government agencies and parts of the public sector and (e) regulatory agencies, which 'limit or control the behaviour of individuals, enterprises or other bodies, using licensing systems, reporting controls, performance standards...' (Dunleavy, 1991). Professions regulators are one example of Dunleavy's regulatory agency type.

These different agency types will vary in terms of the composition of their budgets. He identifies four budget types. Core budget (CB) represents the money spent on the agency's own operations: on staffing, accommodation and office costs. Bureau Budget (BB) includes the core budget plus any money spent on services contracted out to the private sector. Programme Budget (PB) includes the bureau budget, plus any funds transferred to other public sector organisations. Finally, Super Programme Budget (SPB) covers all of the above, plus any spending by other public sector organisations from their own resources, over which the agency has some control. Different agency types will have a different 'mix' of these four budget types. Dunleavy suggests that the incentive to pursue budget maximisation strategies will be strongest in organisations where there is a close relationship between core,

bureau and programme budgets; agencies such as delivery agencies and regulatory agencies.

The bureau-shaping model has generated much debate at the theoretical level (Shaw, 2004), but to date empirical testing of the model has been limited. Much of the existing empirical work is focused on the UK (James, 2003), and there has also been some empirical work in Australia (Dollery and Hamburger, 1996), New Zealand (Shaw, 2004), France and the USA (Matthewson, 1996). Empirical work tends to focus on measuring changes in the composition of agency budgets over time (James, 2003), and is usually focused on substantive, step change programmes such as the Executive Agency reforms in the UK. As such, much of the empirical work to date assumes that changes in budgets that are consistent with the model's predictions are linked to bureaucratic behaviour and not that of other actors (Gains and Johns, 2007). Indeed, to date only one study (Gains and John, 2007) has focused on the motivations of bureaucrats, though this did not link this with changes in agency budget composition.

None of the empirical work around bureau shaping to date has focused on the causal mechanisms by which (a) rational civil servants decide to engage in collective utility maximisation strategies as opposed to individual strategies (b) how these strategies to affect they type of work they undertake in turn affects the structure and function of the agencies within which they operate and (c) how this results in changes over time to the composition of agency budgets. Rather, the limited empirical work that exists makes the assumption that if budgets change as predicted, this must be the result of bureau-shaping behaviours. This assumption severely limits the validity and power of the existing empirical research in the field.

There are also some difficulties with the model (Gains and Johns, 2007). The model assumes a high degree of bureaucratic power (Tullock, 1993) (Dollery and Hamburger, 1996) - that civil servants have the power to secure increases in the budget or changes in the structure of their agencies. This is a criticism that it shares in common with Niskanen's budget maximising hypothesis. Dollery and Hamburger (1996) suggest that their analysis of budget data of agencies in Australia between

1982 and 1992 that both the budget maximisation and bureau-shaping models overstate this power.

I would suggest that, over and above the wider motivations of civil servants identified above, there are contextual factors for which the Dunleavy model does not allow.

Dunleavy's analysis of the budget structure of regulatory agencies, and institutional constraints this places on rational civil servants, reflects economic regulators that are largely funded directly by government. In the UK, professional regulation is 'self-funding', that is to say that the cost of regulation fall completely on the regulated community. One of the criticisms of the Dunleavy model is that he assumes that civil servants are 'relatively unconstrained' (Tullock, 1993). One of the major constraints on them in relation to their ability to maximise core budgets and bureau budgets in regulatory agencies is the need to translate these budget changes into increased fees to registrants. Here, the interests of the regulated profession, as expressed through professional bodies and professional representative on regulatory boards, are to minimise the budgets of regulatory agencies and thereby fees charged to them.

There are other interests involved here too. Registrant fees are tax deductible, and an increase in such fees therefore has budgetary implications for HM Treasury. It may also have implications for other Government Departments. For example, £31 of the £33 registration fee charged by the GTCE was subsidised by the Department for Education. Although the implications of such an increase would be small for those two departments in terms of their overall spend, they are nevertheless interests for which the model does not account.

There is much examination of the relationships between different actors in regulatory policy in the policy analysis literature. Much of this examines the relationship between politicians, government policy makers and agency staff and would question Dunleavy's parsimonious assumption of omnipotent bureau staff. Shipan, for example, has examined the influence that Congress might have on agency decisions and suggests that institutional design, Congressional preferences and overall regulatory regime will all affect agency decisions (Shipan, 2004). Mesquita and

Stephenson (2007) have also examined this relationship and its effect on agency policy making. Although both examining federal regulation in the States, the nature of arm's length regulation and the relationship between primary and secondary regulation provides insight to the UK context.

The second factor ignored by the Dunleavy model is that of external factors over which the regulator has no control. Regulators have disciplinary functions. This requires them to consider complaints or allegations made against registrants concerning their fitness to practice or some serious misconduct. The costs of managing such disciplinary processes represent a considerable proportion of the overall budget of regulatory agencies. Of course, it is entirely feasible that regulators would act to increase the number of complaints received by their agencies, and thereby justifying increases in their core or bureau budgets, but I would then expect to see some evidence of successful marketing campaigns or other work undertaken in order to achieve such an increase.

While Dunleavy posits his theory as a criticism of Niskanen, I would suggest that it complements and adapts Niskanen's model. Indeed, Dunleavy accepts that civil servants may be budget maximisers. He therefore accepts a core tenet of Niskanen's thesis, and one that has been the largest source of criticism of his model (Casas-Pardo and Puchades-Navarro, 2001; p148). Dunleavy's model simply sets out the different institutional arrangements that might constrain a civil servant's budget maximising behaviour.

Finally, Patrick Dunleavy's suggestion that civil servants' interest in policy work is core to their utility function is very similar to the proposition made by public service motivation theory scholars that a component of civil servants' motivation is enjoyment of policy work. I discuss this in greater detail in the following section.

2.7 Public service motivation

So far, I have suggested that the self-interest models outlined by Public Choice academics were developed as a reaction to the deficiencies of public interest

explanations of the policy process. Here, I will give an overview of public service motivation and its key tenets. I will suggest that public service motivation theory was developed as a reaction to these Public Choice models. I will also argue that, although portrayed as an opposite to private interest explanations, public service motivation theory shares a number of core assumptions with its private interest counterpart.

Several academics have criticised public interest theory for failing to provide a coherent, fully developed model that can explain the behaviour of civil servants, professional bodies and others in the professions regulation policy process. Such criticisms generally comes from the public policy literature.

To some extent, these critiques can be challenged for ignoring the considerable extant empirical literature around **public service motivation** that is to be found in the public administration literature. In a seminal article published in 1990, Perry and Wise defined public service motivation as a pro-social motivation to serve the public interest and thereby help others. In some ways a reaction to the one-dimensional behavioural motivation assumed by private interest models (Ritz, 2011; p1128), public service motivation has been variously defined. Broad definitions are provided by Rainey and Steinbauer (1999, as quoted in Wright, Christensen and Isett, 2013; p739), who state that public service motivation is 'a general altruistic motivation to serve the interests of a community of people', and by Perry and Hondeghem (2008, as quoted in Giauque et al, 2011; p229) as an intention 'to do good for others and shape the well-being of society'.

Originally, Perry and Wise conceived of public service motivation as a pre-disposition to 'respond to motives grounded primarily or uniquely in public institutions and organisations' (Perry and Wise, 1990; p368) although also stressed that 'dynamic attribute that changes over time' (Perry and Wise, 1990; p370). Several scholars have sought to identify the nature of the casual relationship between public service motivation and public sector employment - does public service motivation lead individuals to seek and maintain employment in the public sector or do the organisational values of public bodies engender public service motivation in civil

servants? Kjeldsen (2012), Kjeldsen and Jaconsen (2012) and Pedersen (2013), amongst others, have attempted to understand this causal matrix.

Weaker still is the relationship between public service motivation and employment in fields outside (or not necessarily connected to) the public sector. Much of the public service motivation fails to seek to explain the supposed public service ethos claimed by many professional bodies and by several academics in the sociology of the professions.

A 'predisposition' is suggestive of a set of fixed preferences or an alternative form of utility, both of which would place public service motivation within the 'family' of rationalities. It is here that there is some confusion in the PSM literature with regards to the extent to which public service motivation is an alternative to rationality or an additional motivation. Authors such as Rainey and Steinbauer (1999) and Brewer and Seldon (1998)(both quoted in Pedersen, 2013; p360) suggest that PSM is an alternative to private interest forms of rationality. In contrast, authors such as Vandenabeele (2007) suggest that public service motivation goes "beyond self-interest" but recognise that public service motivation includes rational, norm-based and affective psychological needs (Pedersen, 2013, p360).

Indeed, one dimension of the rationality underpinning public service motivation is 'attraction to policy making' (Ritz, 2011, p1129), which is a mirror of the self-interested attraction to policy making inherent in Dunleavy's bureau-shaping model. Indeed, Perry and Wise (1990, p368) recognise that civil servants may seek policy making because such work is exciting and will make them feel self-important, and they also recognise the possibility that civil servants will be seek policy making activities to further the interests of certain groups. Such motivations appear striking similar to utility maximisation motives assumed of self-interested civil servants by Anthony Downs (1967), Gordon Tullock (1985) and Patrick Dunleavy (1991).

There are, however, two key differences that are key to the comparison of private and public interest explanations of policy change in professions regulation undertaken in this research. The first of these is the role of individual versus collective action. A core assumption of Dunleavy's model bureau-shaping behaviour

and of rent seeking is that both require collective action; that is, that both individual action is likely to be unsuccessful and that both professionals and civil servants can resolve collective action problems (Olson, 1965). There is no similar assumption in relation to public service motivation. Indeed, research around the relationship between public service motivation and organisational change (for example, Wright, Christensen and Isett, 2013) suggests a quite passive role for civil servants in policy change; that the extent to which civil servants support change will depend on the benefits they perceive to the 'common good'. For Wright, Christensen and Isett, there does not seem to be a role for civil servants in proposing policy changes to further the public good. This is in contrast with self-interested civil servants and professionals in the bureau-shaping and rent seeking theories, who are almost omnipotent in their ability to propose and implement organisational change (Tullock, 1995).

The second relevant difference is in relation to the expected outcome from policy change. In private interest models, actors are motivated by potential policy outcomes that benefit them. Such models assume that rational actors will not support policy changes that are in the 'common good' if such changes would be of detriment to their own utility. In contrast, public service motivation models assume that civil servants and professions would act in the interests of the 'common good' even where doing so is at the expense their own self-interest (Wright, Christensen and Isett, 2013; p 240).

2.8 Public service motivation: a rationalist critique

The public administration literature includes a number of empirical studies that seem to demonstrate considerable support for the public service motivation proposition. The difficulty is (a) theoretically the model has a number of issues and (b) empirically, the extant research does not sufficiently distinguish between PSM as motivation, norm or interest-based behaviour. Indeed, there are three specific criticisms that I would like to address here; that there is a significant 'black box' issue, where PSM fails to explain where the motivation comes from and why some people develop it and others do not, secondly, that PSM seeks to challenge an

'economic' view of behaviour but fails to recognise that economics today considers a wide range of non-economic motives, and finally, that PSM fails to take account of the incentive structure arising from the institutional arrangements of professions and the public sector, that it does not take account of the role of professions and the public sector as institutions.

2.8.1 The causality problem

One of the key questions that the PSM literature fails to answer is where and how such motivation develops in the first place. This is a particularly key question as implicit to the PSM model is that public service motivation is about the motives of individuals (Perry and Hondeghem, 2008; p3) and is studied at the level of the individual (Andersen et al, 2012; p294) and is thus centred around human agency.

It also implicitly accepts rational self-interest as core to human agency, but argues that some individuals are differently motivated than the general population. If some individuals are so differently motivated, it is surely a requirement of the model to provide explanations of how, when and under what circumstances such differences arise. Yet PSM singularly fails to provide such an explanation; a significant gap that is recognised by some PSM scholars. In an article that analyses differences in work motivation between private and public sector organisations, Buelens and Van den Broeck (2007; p65) identify that most PSM research fails to identify the causes of different motivations between public and private sector employees. Similarly, another PSM scholar, Wouter Vandenberghe (2011; p89) states that 'most of the empirical work on public sector motivation has been concerned with the outcomes...., whereas only a few authors have addressed the origins..'. So significant is this dearth of empirical investigation of the causes of public service motivation, that in a review of empirical research on PSM over the previous twenty years, Perry, Hondeghem and Wise (2010) failed to consider or identify any research in this particular facet of the subject.

This is a significant gap. Had PSM been located within a structural or cultural understanding of human political action, or had otherwise rejected the individualist,

rationalist construct, this causality gap would not be of major importance. However, the causality gap is significant because PSM focuses on individual motivation to explain political behaviour and because it locates this individual motivation in contrast to self-interested behaviour.

2.8.2 Motivation, rationality and the nature of self-interest

Indeed, I would argue that the causality gap is not only significant but also unresolvable. It is unresolvable because of both a core misunderstanding by PSM scholars of the nature of rationality and an assumption by PSM scholars that rationality precludes norm-based behaviour.

The origins of PSM lie in the attempts of public administration scholars to counter the criticisms of rationalist (specifically Public Choice) models of bureaucratic behaviour. They define PSM in relation and contrast to rationalist models and, in doing so, make several assumptions about the nature of rationality in those models. Vandenabeele, for example, defines PSM as ‘the beliefs, values, and attitudes *that go beyond self-interest*’ (2007; p547)(my emphasis). Crewson (1997, as quoted in Greentree, 2009; p7) concluded that differences between public and private sector employees in terms of motivation and expectations could be explained by public sector employees’ strong preference for service rather than economic benefit. Similarly, Andersen et al (2012; p292) state that the ‘public administration literature is increasingly focused on theories that go beyond self-interest’ and cite PSM as one such theory.

The difficulty is, in their attempts to counter rationalist models of bureaucratic behaviour, PSM scholars have adopted a simplistic and narrowly-defined idea of the nature of rationality as being about pecuniary self-interest. They have failed to understand that, for over half a century, economists and political scientists have, in the words of George Akerlof, ‘augmented standard economics to take into account all sorts of different motivations...’. (Akerlof and Kranton, 2010; p32). They have conflated self-interest with selfishness, ignoring that self-interest simply means that individuals have their own preferences which affect the decisions they make

(Buchanan and Tullock, 1962 as cited in Ostrom and Ostrom, 2014; p26), and that preferences may be altruistic (Opp, 2013; p387).

Even William Niskanen, author of one of the most important public choice models of bureaucracy, acknowledged that some civil servants would 'undoubtedly try to serve (their perception of) the public interest' (1974; p39). PSM scholars have failed to understand that rational choice (in its widest sense) does not require that people are assumed to be self-interested; purposeful or goal-orientated is a sufficient core assumption (Munger; 2011; p343). PSM scholars have ignored what is described as the 'family of rationalities' (Ostrom, 1998; p2) or that there are many versions of rationality (Sen, 1987, as quoted in Hodgson, 2012; p94). Indeed, so much empirical evidence has been published that counters this narrow, selfish and pecuniary definition of rational choice that 'a significant number of economists have now abandoned it and at least six (*of whom*)....(Frederick Hayek, Gunnar Myrdal, Herbert Simon, Ronald Coase, Amartya Sen and Daniel Kahneman) have been awarded Nobel prizes...' (Hodgson, 2012; p94).

In addition to focusing on rationality as selfish behaviour, PSM scholars have drawn on a narrow definition of goal-orientated behaviour that focuses on extrinsic or external outcomes. Such a narrow definition is sometimes called thin rationality (Herne and Setälä, 2004; p69) and focuses on the utility of individual actor's preferences (and excludes consideration of the content of those preferences). Such outcomes are external to, and independent of the task being performed by, the actor. The outcome achieved by such action is separate from the act itself. They might include some monetary reward, praise given by a colleague or discounts given by retailers. In these and similar cases, action or motivation has instrumental value and is not undertaken because the task itself is enjoyed.

Such a narrow definition of rationality excludes the possibility of intrinsic motivation being consistent with rational behaviour. Intrinsic motivation is defined as the act of doing something because of its inherent satisfaction rather than for any separate consequence. Such behaviour is motivated by fun, pleasure, by the challenge posed or because the activity is rewarding in of itself. PSM scholars define public service motivation as intrinsic motivation. David Houston (2000; p714), for example, states

that public service motivation 'can be characterized as a reliance on intrinsic rewards over extrinsic rewards'. Equally, Perry and Wise (1990) state that 'in comparison with private sector workers, public employees will place a higher value on such intrinsic regards as service to society, the public interest and the importance of work' and Buelens and Van den Broeck conclude that:

"There is a broad consensus that public sector employees are more intrinsically motivated." (Buelens and Van den Broeck, 2007; p66).

However, there is a great deal of confusion in the PSM literature on this point, both in terms of the compatibility of rationality and PSM and in terms of the intrinsic nature of public service motivations. While many PSM scholars suggest public service motivation is contrary to rationality, others have suggested that prosocial motivations are indeed rational (Wise, 2000). Indeed, in the original conception of PSM, Perry and Wise (1990; p368) identify that PSM is located in rational, affective and normative reasons. Drawing on these three antecedents, Wise (2000) developed an instrument for measuring PSM that covers four domains: self-sacrifice, commitment to the public interest, compassion and attraction to public policy making. The fourth of these, attraction to public policy making, is clearly linked to the rational/instrument antecedents identified by Perry and Wise (Andersen et al, 2012; p295).

In doing so, they recognise that rationality is not limited to material self-interest. However, as I suggested previously, a core assumption of PSM is that rational choice and public choice theories are focused entirely on rationality as material selfishness.

To be fair to PSM scholars, they are not alone in criticising rational choice in relation to material selfish interests. The psychologist Robert Abelson, for example, states that the 'grammar of rational choice employs only the instrumental case, in which everything people do is a deliberate means to a self-interested, material end.' (Abelson, 1995; p27) and a number of academics within rational choice also make this assumption. Karl-Dieter Opp (2013) suggests that a number of RCT scholars adopt a narrow definition of rationality, which focuses on utility theory (Herne and Satala, 2004; p69), where utility is distinct and separate from 'things done

irrespective of benefit or outcome' (Udehn, 1996 as cited in Opp, 2013; p385). Raymond Boudon (2003; p3) identifies a number of postulates made about rational choice theory, of which he includes (a) that actors consider the consequences of their action (the instrumentality or extrinsic motivation identified and criticised by PSM scholars) and (b) that actors are concerned with the consequences of their actions to themselves (the egotism or selfishness identified and criticised by PSM scholars). Jon Elster, one of the narrow rationalists identified by Opp (2013; p390) argues that rational action is about outcomes, as such it is conditional and future-orientated (Elster, 1989, p89).

The difficulty for PSM scholars is that such a narrow definition of rationality is increasingly rejected by proponents of rational choice theory in favour of a wider, more inclusive conception of rationality. Indeed, this widening of the concept of rationality has occurred in three areas that have significant impact on the theoretical cohesiveness of the PSM model. These three areas – (a) expressive interests (b) the impact of norms on individual behaviour and (c) the impact of institutions on individual behaviour – are discussed below.

2.8.3 Expressive interests and intrinsic motivation

Thus, for PSM scholars, the defining characteristic of public service is the intrinsic motivation that leads some individuals to be more prosocial, more altruistic than others. For PSM scholars, it is this characteristic that distinguishes PSM from rational choice theory because PSM proponents assume that rationality is selfishness and arises because of extrinsic motivation (and that rationality, as defined in rational choice or public choice theory, excludes any intrinsic motivation and cannot, by definition, be altruistic).

The difficulty for PSM academics is that a growing number of rational choice and public choice academics accept and incorporate non-instrumental preferences into their models and understanding of human decision making. While some may trace the antecedents of this to the works of Adam Smith or David Hume, for me the real interest arose following the publication of Anthony Downs's classic 1957 work *Economic Theory of Democracy* and the resulting emergence of the paradox of

voting. In his original turnout model, Downs takes into account only instrumental or extrinsic motivation to explain why people vote. He proposes a model to explain a rational actor's decision to vote as a function of (a) the benefit of her preferred candidate being elected (b) the probability that her vote will be decisive being greater than (c) the cost to her of voting. The paradox arises because such an instrumental model would predict almost zero turnout, yet so many people do turn out to vote, meaning either those voters were acting irrationally or some 'other-regarding' individual preferences, not accounted for in the model, were part of her rational calculation.

In response to this paradox, in an oft cited article in the *American Political Science Review*, William Riker and Peter Ordeshook amended Downs' model to account for non-instrumental (that is, intrinsic) motivations (Riker and Ordeshook, 1968 as cited in Herne and Setälä, 2004; p78). Schuessler says that they are expressively motivated; that is, voting is a 'means of expressing political beliefs and preferences and, in doing so, to establish or reaffirm their own political identity.' (2000; p87), and that such expression is valuable to the individual 'in its own right' (Hamlin and Jennings, 2011; p645).

While much of the work around expressive utility has been around voting behaviour, it is not limited to this single arena. Hamlin and Jennings, for example, argue that while much of published work around expressive behaviour is focused on resolving the paradox of voting, expressive motivations can be found 'across the range of political behaviour' (2011; p647) and that expressive behaviour is relevant across all institutional contexts (p648). In his book *Rational Lives*, Dennis Chong does not define non-instrumental behaviour with reference to voting. Rather, his discussion of expressive behaviour goes much wider and encompasses all forms of political action. Chong suggests that such expressive behaviour refers to 'enjoyment or value-expressive action' and further states that:

"The hallmark of expressive action is that the benefit of taking such action is inseparable from the process of taking the action."

(Chong, 2000; p223)(my emphasis)

Similarly Hillman (2010) identifies a number of types of expressive behaviour, including expressive voting (p404), expressive rhetoric (p406), and expressive generosity (p408). And Laband et al (2009; p97) report empirical evidence that politically expressive behaviour should be understood not as a separate form of motivation but rather within a wider context of generally expressive behaviour.

While academic interest in expressive choice has grown considerably in recent years, there are still a number of conceptual difficulties. There is no single, commonly agreed definition of the concept. Several scholars focus on expressive choice as being about identity (Arye Hillman, for example, or recent work by the Nobel Prize winning economist, George Akerlof) whereas others take a wider view (Colin Jennings and Alan Hamlin, for example). As noted above, much of the literature focuses on expressive choice in relation to voting; others identify different forms and contexts of expressive choice and include duty, morality and beliefs as being important aspects of expressive behaviour. While there is agreement that expressive and material utility are two sides of the same coin and, when summed, give an actor's overall utility, there is little discussion about how and when rational actors decide whether to act to further their expressive or material utility. There is, however, agreement that an individual's expressive and material interests might conflict. They may also complement each other. There may be a trade-off between them (Hamlin and Jennings, 2011; p649). A number of proponents of expressive choice suggest that such behaviour is often low-cost in nature (for example, Hillman, 2010; p404).

For me, there is a striking similarity between the type of expressive behaviour outlined by these authors and the intrinsic motivation that leads some individuals to exhibit public service motivation. Indeed, Ayre Hillman goes so far as to say that expressive behaviour explains "intrinsic behaviour" (his speech marks)(2010; p411), though provides little in the way of explanation or evidence to support that statement.

Expressive behaviour is defined as being non-instrumental and separate from material utility. It is about individuals confirming aspects of their 'beliefs, values, ideology, identity or personality' (Hamlin and Jennings, 2011; p646) regardless of the

outcome and as such is valuable to the individual 'in its own right'. As such, expressive action is action that is rewarding in of itself. As Gabor Toka states:

“The hallmark of expressive action is that the reward of bearing the costs of a particular action is intrinsic to the activity itself.” (Toka, 2009; p270)

The conception of intrinsic motivation that is core to PSM theory draws heavily on self-determination theory. Key studies that led to emergence of self-determination theory included research on intrinsic motivation. Alan Waterman, in discussing different concepts of intrinsic motivation, argues that interests, expressiveness and enjoyment are all related to identity and to intrinsic motivation (Waterman, 2005; p168). Waterman further states that expressiveness embodies a person's core sense of being and of their identity (p169). So I would suggest that it is clear that expressive behaviour is a fundamental part of the original conception of intrinsic motivation that is so key to public service motivation. It is also clear that enjoyment of an activity as a reward in of itself, for how undertaking the activity allows individuals to confirm aspects of their identity that are important to them, are key to both the concepts of intrinsic motivation and expressive behaviour.

I would therefore suggest that the public service motivation identified in PSM theoretical and empirical work should be conceptualised as expressive choice and thus as entirely consistent with self-interested rationality. To think of public service motivation as a form of expressive behaviour resolves the theoretical gaps in the model. In particular, it does not require that we identify some people as **differently** motivated to the general population. Because we no longer need to think of public service motivation as being a different form of motivation, the key causal questions that PSM fails to address – namely, where does the altruism and prosocial motivation of those expressing public service motivation come from and why do some people develop these and others do not – are no longer significant if such motivations are seen as expressive behaviour. This is because all human beings engage in both instrumental and expressive behaviour.

PSM and rational choice also share many epistemological and methodological underpinnings. While there are many varieties of rational choice theory (indeed,

there are many rational choice theories), core to these theories is methodological individualism, reflected in both a commitment to axiomatic methods characterized by micro-reductionism (that is, the modeling of interactions and social choices on the basis of individual actors' preferences). Similarly, empirical work around PSM uses axiomatic methods, drawing heavily on quantitative models to examine (a) levels of public service motivation between public sector and private sector employees (Houston, 2000)(Buelens and Vanden Broeck, 2007), (b) employment sector (Kjelsen and Jacobsen, 2012) and (c) gender (DeHart-Davis, Marlow and Pandey, 2006). I would therefore argue that PSM has more in common with rational choice than PSM scholars would like to suggest, and that public service motivation can be considered as expressive behaviour and therefore entirely within a rational choice framework.

Core to PSM is the idea that some people are essentially more altruistic than others. Altruism is core to both to definitions of public service motivation - for instance, Rainey and Steinbauer's definition as 'general altruistic motivation to serve the interests of a community of people, a state, a nation or humanity – and to specific tools for measuring public service motivation (1999, as cited in Pedersen, 2013; p360). I have previously mentioned the four dimensions of Perry's tool for measuring public service motivation, of which one, self-sacrifice, contains the altruism that is core to PSM. Self-sacrifice is the extent to which an individual foregoes private interests to serve others. Self-sacrifice is key to the whole of public service motivation (Kim and Vandenabeele, 2010; p702): indeed, it is the foundation of the other PSM dimensions (Andersen et al, 2012; p295).

In contrast, expressive behaviour is self-interested behaviour (Hillman, 2010; p404) and is not the same as altruism. Indeed, for Jankowski (2002; p57) altruism is an alternative explanation of human political action to expressive behaviour. While there are many similarities between PSM and rational choice, and while counting public service motivation as a form of expressive behaviour has many merits, this key contradiction would seem to be crucial. But, while PSM scholars claim that altruism is key to public service motivation, I would suggest that they misunderstand or have inappropriately applied the term altruism in their discussions.

The Perry (1996) PSM dimension tools covers four dimensions and provides over forty statements to measure the level of public service motivation. The self-sacrifice dimension contains eight statements (variables) used to measure the extent to which a respondent exhibits altruism. The table overleaf presents these eight statements.

Reference	Variable
PSM 1	Making a difference in society means more to me than personal achievements.
PSM 5	I believe in putting duty before self.
PSM 6	Doing well financially is definitely more important to me than doing good deeds. (Reversed)
PSM 9	Much of what I do is for a cause bigger than myself.
PSM 12	Serving citizens would give me a good feeling even if no one paid me for it.
PSM 17	I feel people should give back to society more than they get from it.
PSM 19	I am one of those rare people who would risk personal loss to help someone else.
PSM 26	I am prepared to make enormous sacrifices for the good of society

Table 6: Variables in self-sacrifice domain in Perry's PSM scale (Perry, 1996; p11)

It is worth considering these variables or statements in more detail. Several seem related to the respondent's sense of identity and, in particular, how such individuals would confirm and demonstrate such important aspects of their identity, their sense of duty or their political beliefs. PSM 5, for example, talks about an actor putting duty first, which implies that she has an understanding of what duty entails, an appreciation that duty is important and a desire to be seen by others to be doing her duty, all of which would be entirely consistent with expressive behaviour. PSM 12 involves an actor getting a 'warm-glow' from their allegedly altruistic behaviour, which, to me, sounds like instrumental behavior (albeit it not instrumental in terms of material outcomes). PSM 17, PSM 26, PSM 12 and PSM 19 all include references to political belief systems and, arguably, an actor's desire to confirm their political beliefs and thereby to confirm their identity. Indeed, this is something recognised by James Perry himself, who argued that the self-sacrifice dimension of PSM is shaped by political ideology and identity (Perry, 1997 as cited in Vandenabeele, 2011; p92). While each of the variables used to measure self-sacrifice in Perry's PSM Scale clearly involves serving a public interest, for me there is no doubt that the individual performing this public service is doing so to further their expressive interests.

Part of the problem here is the definition of altruism that underlies PSM. Altruism can be defined as an individual acting to benefit others regardless of costs to herself. This is very different to the concept of altruism used by Perry in his PSM scale. Here, Perry draws on the definition of altruism given by John Macy, which Perry says is:

“the willingness of public servants to forego financial rewards for the intangible rewards they receive from serving the public”

(Macy, 1971 as cited in Perry, 1996; p7)

Thus, Perry’s understanding of altruism (as it applies to PSM, the understanding that is core to the PSM scale and its use in much PSM empirical work) is in fact what Andreoni defines as **egotistical** or warm-glow altruism (1989, as cited in Jankowski, 2002; p62). In providing service for others, individuals experience a ‘warm-glow’, some personal reward which is in itself the motivation for servicing the public good. When an actor receives some utility from giving or providing to others, and this utility is independent from the benefit to the recipient, then surely the actor is being self-interested and rational. Running into a burning house to save the child of a stranger is altruism; interning for a Member of Parliament because you hope someday to stand for Parliament is self-interested, rational action even where the public interest is also being served. The difficulty with the conception of altruism that underlies PSM is that it widens the scope of altruism to include a wide range of self-interested acts just because they potentially also benefit some other third party.

Of course, my argument that public service motivation is a form of expressive behaviour is not without difficulty. I have already highlighted the conceptual problems with expressive choice - the lack of agreed definition, arguments about what constitutes expressive choice and its relationship to material utility. But over and above these conception problems, there is also the sense that the proponents of expressive choice are simply trying to resolve the paradox of voting and, in doing so, widen the scope of rationality so that any action, however motivated, becomes rational and self-interested. Rationality thus becomes a tautology, a self-fulfilling concept that is so wide as to be meaningless.

There are also several authors who suggest that expressive choice fails to resolve the paradox of voting. Jankowski, for example, argues there are major limitations to including such non-instrumental explanations: they require ad hoc additions to explain differences in turnout by socio-economic groups (such as more educated individuals are more likely to vote) and that turnout varies by election (2002; p70). Jankowski also argues that expressive behaviour fails to explain strategic voting (2002; p55). The argument here seems to be that if expressive choice cannot resolve the paradox of voting (the very issue that expressive choice was proposed to resolve and the very issue where much expressive choice literature is focused), then it is unlikely to be able to explain other forms of non-instrumental behaviour. However, Jankowski seems to confuse decisions about which candidate to vote for and the initial decision of whether to vote. His argument that expressive choice cannot explain strategic voting is also open to challenge. There is clearly a difference between an actor voting for a candidate because of the perceived net benefits to her (instrumental voting) and an actor voting for anyone else to prevent a candidate from winning (expressive voting or minimaxing behaviour).

And while there is a growing literature around expressive behaviour, it is still limited in terms of number of proponents, scope and application. Although the expressive choice literature argues that expressive and material interests are equally important, this seems to be a point missed in the wider rational choice literature, where instrumental action still has 'exalted status' (Abelson, 1995; p31). Rather like PSM scholars, however, Abelson has equated rationality with a narrow scope of selfish, material interest. As I have already pointed out, most rational choice scholars would define rationality as being goal-orientated or purposeful behaviour, which is the result of many different forms of motivation. And there is more than a little inconsistency in the anti-rational choice view for saying that rationality is both conceived too narrowly as to exclude many forms of human behaviour and at the same time so widely so that all behaviour is essentially considered rational.

2.8.4 Norms and institutions

Not only do PSM scholars make rather broad and unsupportable assumptions about rationality in rational choice theory, they also make assumptions about the role of norms, role that norms play with respect to public service motivation and the role that norms play in rational choice theory.

In defining public service motivation, Perry and Wise (1990) identify the role played by norm-based motives. Perry (1996; p6) goes on to state that norm-based motives are the actions generated by efforts to conform to norms. Andersen et al suggest that norms play an important part in public service motivation, arguing that:

“Being members of public organisations and of society as a whole, individuals are likely to internalize social norms and values regarding the appropriate behaviour and societal contributions expected of them when participating in the delivery of public services.” (Andersen et al, 2012; p295)

The idea of public service is seen as an important norm within the PSM literature. It is captured by the *commitment to the public interest* domain in Perry's PSM scale. However, there are limited attempts in the PSM literature to define norms, to explain where and how these norms arise and how they might incentivise some individuals to be motivated by public service norms. Brewer (2008, quoted in Kjeldsen, 2012, p500) states that continued employment in the public sector involves socialisation aimed at internalising public values. Similarly, Anne Mette Kjelson (2012; p503) suggests that a number of PSM scholars have placed the development of public service motivation in an institutional framework, arguing that institutions such as the education system and public organisations transmit public values to public sector employees. Kjelson is one of the few PSM scholars who recognises the interaction between institutions and norms. There is also an implicit assumption in the PSM literature that explanations of human political action derived from rational choice models somehow exclude considerations of norm-based motivations.

Of course, norms are a contested concept in political science, and to some extent it is understandable that PSM scholars do not engage in lengthy, theoretical discussions about the nature, origin and effect of norms on public service motivation. There is some reason to question the extent to which rational choice theorists have provided satisfactory explanations of compliance with norms (Festre, 2010; p519); and Opp (2013; p385) suggests that some RCT theorists do not believe that norms can be explained by rational choice. Opp calls this the 'autonomy' thesis, with which he associates Jon Elster, Lars Udehn and March and Olsen (p385). He distinguishes this from a view of norms as incentives and therefore 'they are a component of the utility function of individuals' (p384). However, PSM scholars choose to ignore the incentives thesis in RCT and to focus on the autonomy thesis. PSM scholars assume that rationality completely excludes norm-based motivations, as with their narrowing of rationality to measure selfish, material interests, suggests a lack of understanding of the complexity and completeness of rational choice theories.

There has been much recent interest with rational choice theory around the role of norms and institutions. For Sue Crawford and Elinor Ostrom, norms are a type of institution distinct from strategies and rules. Institutions here are 'the rules of the game' (North, 1990; p3) that incentivise and constrain human political, social and economic interaction and exchange. Norms develop with and are learnt from our interactions with each other (Ostrom and Ostrom; 2014; p137); they are moral codes of behaviour (Benabou and Tirole, 2006; p1653) that help us decide how to act (Festre, 2010; p514) and what we expect from each other in particular contexts or situations. Norms are the constraints that structure our interactions (North, 1990; p36). For Elinor Ostrom, humans lack complete information and are unable to consider all of the available options when interacting with others. Norms are 'rules of thumb' that enable us to deal with our bounded rationality (Ostrom and Ostrom, 2014; p136). It is the nature of the sanction involved that distinguishes between strategies, norms and rules as institutional types – norms are moral understandings that rely on individual and social pressure sanctions to ensure compliance (Crawford and Ostrom, 1995, as cited in Schluter and Theesfeld, 2010; p447).

Given the epistemological and methodological similarities between PSM and rational choice and the role that norm-based behaviour plays in public service motivation, I

wonder why PSM scholars do not acknowledge the work of Ostrom, North and others and incorporate their understanding into the PSM model. As with my above discussion of expressive utility, adopting a rational choice institutionalism approach would be consistent with other aspects of PSM and would resolve the significant gaps in the model. The difficulty for PSM scholars is that to do so would undermine the very reason public service motivation was devised as a theory in the first place – namely, to counter New Public Management and other rational choice approaches to public administration.

Indeed, it is RCT's understanding of the process by, and the effect of, individuals internalising norms that poses one of the greatest threats to the theoretical integrity of PSM. Because at the heart of the causality problem I discussed previously is the question of whether individuals who are public service motivated seek out employment in public service sectors or whether such employment leads to increased public service motivation in some individuals. This is to say, does public service motivation come from the internalisation of public service norms within public institutions or is public service motivation an inherent characteristic of some parts of the population that leads them to seek out employment in the public service. Despite the assertion of a number of PSM scholars, there is limited and mixed empirical research that public service motivation predicts individual's preference for public sector employment (Pedersen, 2013; p358). Wright (2008), Crewson (1997), Lewis and Frank (2002) and Wright and Christiansen (2010) are amongst a number of scholars who have been unable to isolate the effect of public service motivation on employment preference from the effect of employment in the public sector on levels of public service motivation (as cited in Pedersen, 2013; p358).

One study found that education is correlated with public service motivation (Pandey and Stazyk, 2008 as cited in Vandenabeele, 2011; p91), though there is some evidence to suggest that type of education or training undertaken might be important. Kjelson (2012; p504), drawing on previous work by Bright (2005) and Perry (1996) tested this empirically, and found some evidence to suggest that the relationship between education and public service motivation could be attributed to the 'professionalising' effect of vocational programmes intended to lead to public service employment or work in professions.

Kjelson's research suggests that levels of public service motivation might better be explained through internalisation of norms rather than inherent differences in public service motivation. Here, public service is the norm that is internalised. Norms become internalised when following the norm becomes a form of intrinsic motivation (Opp, 2013; p384) through which the individual attaches some positive or negative costs to taking or not taking particular forms of action (Ostrom and Ostrom, 2014; p137). As such, when norms are internalised, they incentivise and constrain our behaviour. Actors 'seek to fulfil the obligations encapsulated in a role, identity, a membership of a political community or group, and the ethos, practices and expectations of its institutions' (March and Olsen, 2006; as cited in Opp, 2013; p389).

Of course, this rationalist explanation of the role of norms is not the only available approach. There are many competing explanations: socialisation theory, for example, a key tenet of which is that society's values are passed across generations through the internalisation of norms (Gintis, 2003; p156). However, the structural assumptions underlying socialisation theory would seem at odds with (and rationalist norms as incentives entirely consistent with) the individualist, axiomatic and micro-reductionist underpinnings of PSM. As with other areas of the PSM thesis, it is therefore puzzling as to why PSM scholars have not located public service motivation within a rationalist framework.

Applying this rationalist norm-incentive thesis to PSM would see commitment to public service as a norm that, when internalised by public sector employees and professions, increases the level of expressed public service motivation and the intrinsic rewards inherent in expressing public service motivation. The norm has developed as the size and extent of the state has grown. Indeed, in several competing explanations of bureaucracy, the public service norm becomes more apparent at the beginning of the twentieth century: Max Weber's ideal-type bureaucracy, for example, includes an early version of the public service norm where bureaucrats must not use resources or positions for their own personal gain. And, for me, the development of this norm has enabled politicians and civil servants to

legitimise the growth in size and scale of the state as this growth is desired by the voting public and delivers services in their interests.

2.8.5 Professions and the professions regulation as institutions

It is at this stage I would like to suggest that the professions and professions regulation should be considered as institutions, and as such act to incentivise and constrain the behaviour of actors who are professionals and/or work in the professions regulation. Core to the institutional statements of both professions (as I set out in section 2.2) and public sector bodies engaged in professions regulation as conceived in PSM (as I set out in section 3.2.8) is the norm of public service. I have previously drawn on Douglass North's definition of institutions as 'the rules of the game' (North, 1990; p3) and highlighted Elinor Ostrom's view that institutions involve 'strategies, norms and rules' (Ostrom, 2007; p23). This does not mean, however, that there is a common definition of what constitutes an institution (Schluter and Theesfeld, 2010; p445)(Ostrom and Ostrom, 2014; p97), nor agreement on how institutions affect human behaviour or should be analysed in political science. While North's definition is much cited, it is only one of a number of competing rationalist conceptions of institutions. It is similar to William Riker's definition (1982, as cited in Ostrom, 2014; p97) of institutions as 'rules of behaviour, especially about making decisions' and to Hall and Taylor (1996; p938) who define institutions as the 'formal and informal procedures, routines, forms and conventions' that effect our decisions. In contrast, Diermeier and Krehbiel (2003; p125) suggest that institutions are the contextual features that define the incentives and constraints of individual behaviour in a collective choice setting while Ostrom (2007; p23) defines them as 'shared concepts used by humans in repetitive situations organised by rules, norms and strategies'. While the definitions provided by Ostrom and North appear different - North's is that institutions **are** rules and Ostrom's that strategies, norms and rules are different parts of the shared concepts that are institutions – there are different conceptions of what constitutes rules and how they affect behaviour. North recognises that formal rules are only a very small part of the constraints on human behaviour (p36) and includes norms in his understanding of informal rules (p40). Indeed, Kay (2005; p555) identifies three different levels of institutions in relation to

public policy: macro or constitutional level, collective choice or policy decision level and the micro, individual actor level.

I want to first outline why professions should be considered as institutions (and thereby, as human devised rules that incentivise or constrain the behaviour of individual professionals). In the sociology of the professions, several scholars see professions as institutions (including Evetts (2000; p3), Dingwell and Lewis (1983) and Muzio, Brook and Suddaby (2013; p699)), though these tend to take a structural approach to examining institutions. In contrast, Deborah Savage argues that 'economics has no theory of professions as distinct economic institutions' (Savage, 1994; p129). This is a major limitation; given the micro-level mechanisms inherent in both the public and private interest theories this research seeks to examine, I would suggest that any analysis of professions as institutions should emphasise individual action (Robson et al, 1996; p398) and therefore should draw more on economic than sociological models of human behaviour.

Professions can be defined as institutions both at the level of individual professions and at the meta-level of professions as a whole. At both levels, professions exhibit strategies, norms and rules that incentivise or constrain the behaviour of individuals within a collective choice setting. Examining first the meta-level, the attributes of professions as established by writers as far back as Carr-Wilson provide a clearly defined group of people, with established codes of behaviour and expectations and processes (through a formal education and training requirement) by which individuals internalise these norms. Through this process, individuals develop a professional identity and a sense of professionalism.

Although there is a growing literature on professionalism, it is clear that there is a lack of common understanding of what it means, where it comes from, and whether/how should it be taught. There are three different frameworks for analysing professionalism, which Hodges et al have identified as individual, interpersonal and societal-institutional and van der Camp et al have identified as intrapersonal, interpersonal and public (both cited in Burford et al 2014; p362). Here, individual/intrapersonal conceptions of professionalism appear to correspond, in rational choice terms, to the internalisation of norms that incentivise individuals to act

in accordance with the codes of behaviour and identity of the profession. There are clear sanctions for actors who fail to meet the behaviour expected of them; and, with respect to those professions regulated by a chartered institute or by a government regulator, these sanctions are formalised.

Not only is there an established process by which individuals internalise professional norms, there is also a common process by which occupations develop into professions. These attributes are common to all professions, although the specific content of the strategies, norms and rules might vary. As noted in section 2.2, several academics including Wilensky (1964; p145-146) and Neal & Morgan, (2000; p11) have identified a typical pathway taken as occupations transformed into professions.

I now want to move to defining the professions regulation as an institution. Here, I draw on arguments of Paul Pierson, who suggests that:

“...major public policies also constitute important rules of the game, influencing the allocation of economic and political resources, modifying the costs and benefits associated with alternative political strategies...” (Pierson, 1993; p596)

Defining professions regulation policy as an institution highlights a significant problem inherent in institutional analysis. Institutions are not discrete entities but often overlap both vertically and horizontally. In this case, many professions will be found inhabiting space within the public sector. Some professions will be almost entirely employed by the public purse (teachers, for example) and others will be employed both publicly and in the private sector. Others, such as GPs, will be privately employed but contracted to work for the public sector. This overlap can be significant, particularly considering the shared norm of public service that is argued to be common to be professions and the public sector. It is also a misnomer to speak of the public sector as a single, homogenous entity. As with the professions, the public sector can be viewed as an institution at different levels – the public sector as a whole, national and local government, by sector (health, education, defence for example), and type of organisation (there are over one thousand government agencies in the UK (O’Leary, 2015; p8)).

3 Method

3.1 Key assumptions

The core assumption driving this research is:

Professions regulation policy is the outcome of a complex, dynamic negotiation between different interest groups. These interest groups - professions, consumers, regulators, policy makers, politicians and others – are coalitions of individual actors seeking to achieve their goals through the regulation policy process.

The fundamental question answered by this research is whether these actors are motivated by public or private interests when they participate in the professions regulation policy process.

Arising from this core assumption and the relevant literature are the following assumptions:

- A1:** Individual actors act in an 'all things considered' manner when participating in the regulatory policy process. This behaviour might be motivated by either the public interest or private interests.
- A2:** Individual actors make decisions in the real-world, in which humans experience knowledge problems both because information is incomplete, imperfect and often contradictory and because, as human beings, our cognitive limitations make it difficult for us to make fully rational decisions.
- A3:** Individual actors participate in interest groups where they believe this will increase their ability to achieve their goals (where they believe that such participation reduces their transaction costs of participating in the policy process or increases their impact on the policy process).

- A4:** The regulation policy process is a complex, dynamic one that involves various actors acting to achieve goals. The complexity and dynamism of the process means that no single actor is able to utilise full information about the options open to them or the likely future outcome of pursuing one action over another. This means at some decision points, some actors may be acting in a boundedly rational manner, with incomplete information or in a state of fundamental uncertainty.
- A5:** Regulation is a distributive policy that involves the transfer of resources from one group to another. Regulation policy is not a zero-gain transfer: at the aggregate level, there are benefits and costs arising from regulation and the benefits may outweigh the costs. Nor is the transfer of resources a simple, ongoing transfer from one group to another: regulation may result in the transfer of resources between actors with similar interests (where one regulated actor benefits at the expense of another regulated actor); between actors with complementary interests; and between actors with different interests (for example, between consumers and regulated professionals). This distribution process will effect whether, how and for how long actors engage in the professions regulation policy process. It will also be significant in a comparison of public and private interest explanations of the policy process, if public interest explanations are convincing, I would expect to see a distribution of resources from professions and to the public. Alternatively, if private interest explanations are more convincing, I would expect to see a transfer of resources from the public and to professions and regulators.
- A6:** Understanding the benefits and costs of professions regulation, which groups benefit and which pay the costs, is key to understanding whether public interest or private interest models have greater explanatory power. Here, I assume that key actors will only continue to participate in the policy process if they believe the outcome of such participation (the benefits and costs) are in line with their goals. That is, actors whose participation is explained by public service motivation will cease to participate or change the nature of their participation if they believe such participation is generating benefits for the regulated profession and costs for the general public.

A7: Professions and professions regulation are institutions, sets of rules of the games that constrain and incentivise actors as they participate in the policy process.

3.2 Research questions

The core research question driving this research is:

Are key actors in the professions regulation policy process motivated by the public interest or private interests?

Arising from this core research question and from the review of literature undertaken for this research, this research seeks to test answer a number of secondary research questions. These are:

Which interest groups are involved in the policy decisions to introduce or change the nature of statutory regulation for professions?

What is the influence of different interest groups on the (a) introduction of regulation to a profession and (b) the extent of regulatory scope and development?

What, if any, are the benefits of statutory regulation to each of the interest groups involved?

What, if any, are the costs of statutory regulation to each of the interest groups involved?

How do the benefits and costs of professions regulation incentivise or constrain each of the interests groups involved?

Do the benefits and costs of professions regulation incentivise key actors to work in the public interest or for private interests?

There are further questions outlined in each of the three empirical chapters in relation to regulators, professions and the public.

3.3 Research design

The key implications arising from the contextual and definitional issues set out in chapter 1, the implications for this research arising from my evaluation of the relevant literature set out in chapter 2 and the assumptions I make outlined above have influenced my decisions around research design, method and the specific tools I use to undertake this research. By research design, I mean my overall strategy for answering the core research question in a convincing and comprehensive manner. It is my overall approach or framework for conducting my research: as such, it is not the specific methods by which I propose to collect or analyse data (De Vaus, 2001; p9) but rather the means by which I select what type of data are most appropriate to answering my research question.

In designing my research, I am cognisant of the problem of complexity inherent to public policy research (Kay and Baker, 2015; p2) and evident in the specific policy field I wish to investigate. The development of regulatory regimes, including professions regulation policy, is one of complex decision-making and policy choices (Newman and Howlett, 2014; p493). There is a complex landscape of different actors, with different interests, making decisions in context-specific situations that have both time and place dimensions. Here, I focus my research on an assumption that policy is developed, implemented and changed through a process of negotiation and synthesis (Capano and Howlett; 2009; p2) to further actors' interests, whether they be public interests or private interests. In such negotiations, I assume that actors may be boundedly rational and also face problems of uncertainty. As such, while individual actors are seeking to further their interests (whether public interests or private interests), I assume that there is not a pre-determined outcome. It is essential that my research design can capture this.

I am also clear that I am **not** seeking to describe or categorise policy change in professions regulation in the UK. There is of course a substantive academic debate around the scope and timing of change (Kay, 2005; p553), the drivers of change (Capone and Howlett, 2009; p2), whether such change is significant or minor (and indeed, how to distinguish between such gradients), whether such change reflects endogenous or exogenous factors and whether such change is incremental (Lindblom, 1959) or more revolutionary in nature (Baumgartner and Jones, 1991). I am not looking here examine which of the four major theoretical perspectives¹⁶ identified by Capone and Howlett (2009; p2) best explains the policy changes that I identify in section 1.7 as being evident in professions regulation since 1979. Rather, the focus of my research – whether actors are motivated by public interests or private interests as they engage in this policy process – is such that I implicitly assume that change is driven by a process of negotiation (what Capone and Howlett refer to as a dialectic approach).

Although I am not examining models of policy change or dynamics, it is worth touching on an issue that is core to my dialectic assumption that policy change is the outcome of negotiation between different policy actors, and an issue that is fundamental to my research design. This is the concept of path dependency.

In chapter 1 of this thesis, I set out my view that professions regulation policy is an institution, and as such it is a set of formal and informal arrangements that incentivises and constrains actors in the policy process. I drew on Douglass North's definition of institutions as 'the rules of the game' (1990; p3) and a number of similar definitions, while cognisant that institutions are a highly contested concept in political science. Over the past thirty years, academic debate has increasingly focused on the idea that institutions matter, though what constitutes institutions, how they effect decisions and the overall impact of institutions are matters of some conjecture, and a number of 'institutionalisms' have developed. These institutionalisms provide

¹⁶ Capone and Howlett suggest there are four major theoretical perspectives on the historical sequencing of policy change. They describe these as 'cyclical' (where policy change invariably returns to the status quo), 'linear' (change is evolutionary or incremental in nature), 'teleological' (change occurs in the direction of some final identifiable goal) and 'dialectic' (where change occurs through a process of negotiation).

different models of policy change, although several authors argue that there is now a 'new orthodoxy' that makes a number of assumptions.

Howlett and Cashore (2009; p36) identify these orthodox assumptions as (1) stability in policy deliberations, which leads to path dependency (2) an expectation of a typical pattern of policy change that involves long periods of stability in an institutionalised policy monopoly with periods of revolution change in policy equilibria, and (3) that this change is the result of some exogenous shock to the policy system.

Core to these assumptions is the concept of path dependency – the basic idea that history matters, that initial decisions in one direction narrow future choices, that is the early trajectory of policy constrains later policy directions (Kay, 2005; p553). Peters, Pierre and King associate path dependency with historical institutionalism, and argue that core to this view is that policymaking systems are conservative, defend existing patterns of policy and the organisational arrangements for making policies (2005; p1276). They cite Pierson's arguments that path dependent systems are self-reinforcing and as such make institutional and policy change extremely difficult.

In this view, policy systems are self-reinforcing because past investments and continued payoffs mean actors calculate that continuing with a policy is more appealing than any potential alternative (Pierson, 2000; p252). As Ross identifies, key to this view is that actors benefit from increasing returns from past investments and net policy payoffs, even if those returns are not optimal (2007; p593). Peters, Pierre and King suggest that this borrows from Herbert Simon's work – that boundedly rational policy actors will minimise decision-making costs rather than maximise goal attainment (2005; p1285) (a view echoed by Adrian Kay (2005; p554)), thereby reducing the likelihood that actors will seek policy change to optimise outcomes.

While path dependency may be core to historical institutionalism and could be considered as a dominant paradigm in policy studies, it is not an approach that I find completely convincing, nor is it one that is consistent with the core assumptions and approach of this research. A number of authors have identified a range of problems

with the concept of path dependency, and for me there are three key issues that need to be addressed.

The first of these issues is that path dependency is more a description of what has occurred rather than a means to explain why such policy has occurred (Peters, Pierre and King, 2005; p1282). Although history matters, path dependency only provides a means of describing that history. Scholars using this approach tend to see stability and continuity as an historical constant, but path dependency does not provide a useful means for explaining current or future trends, for 'pinpointing a mechanism or the mechanisms that propel social change' (Raadschelders, 1998 as cited in Kay, 2005; p561). Of course, many scholars would reject the idea that prediction could and should be the goal of public policy research, but it is partly because those utilising this approach study the paths taken as policy develops and do not consider the alternative paths that were not taken and how such decisions were made, that path dependency is not a useful analytic tool.

There are also issues with how such scholars define, identify and measure policy change. To some extent, historical institutionalism can be criticised for seeing path dependency in policy systems because they ignore small scale change and the cumulative effect of a number of small scale changes. Instead, they focus only on substantive policy changes. This is a significant issue, particularly when considering that point I made previously that public policy is rarely unilayered; rather, it is a nested, multi-level phenomenon which, in relation to professions regulation, involves different policy instruments at the macro-level, profession-level and specific entry, conduct and exit levels. Scholars who utilise path dependency approaches may see stability and continuity in public policy simply because they ignore the multitude of ongoing policy adjustments occurring across these different policy layers.

Of course, this is partly because deciding whether specific policy adjustments should be viewed as change and, if so, whether they are substantive changes is a matter of judgement and not precise measurement (Peters, Pierre and King, 2005; p1286). But many scholars using the path dependency approach fail to specify how they make such judgements, on what criteria they use and how these are applied. In doing so, they posit a single policy trajectory that increasingly narrows over time. I

would suggest that there are a wide array of different policy options along a number of different paths, some of which may be 'locked-in' and others of which may be open wide.

The result is an approach that not only sees stability and continuity as core to public policy, but is also unable to provide a convincing explanation for how and when change does occur (Hay, 2002; p15)(Ross, 2007; p594)(Kay, 2005; p566)(Peters, Pierre and King, 2005; p1289). To some extent this is an unfair criticism: path dependency does recognise that policy change happens, but locates the causal mechanism of such change in exogenous shocks. But the difficulty with this approach is that it completely ignores the endogenous facets of a policy system that may lead to change. It also ignores the limited empirical evidence around exogenous change (Howlett, 2009; p245).

As I outlined in section 1.7, several writers suggest that changes in healthcare professions regulation over the past forty years can be explained as a rational policy response to the failings of self-regulation, particularly highlighted by a series of scandals in healthcare. Kuhlmann and Allsop suggest that public trust in the system of self-regulation has been severely reduced as a result of scandals, and the resulting public inquiries have exposed the failures of self-regulation (2008; p179). Dixon-Woods et al (2012), Davis (2000) and Moran (2001) all highlight a series of major public inquiries. Indeed, a number of government reforms have been explained by direct reference to the recommendations made by these public inquiries which, for path dependency scholars, act as the exogenous shock that causes policy change in this area.

The difficulty is, similar moves from self-regulation to regulated self-regulation are evident outside the UK. And even within the UK, the changes in policy that have led to a transition from self-regulation to regulated self-regulation is not unique to healthcare. Architects, solicitors and barristers have all experienced similar changes. By focusing their attention on exogenous shocks, historic institutionalism ignores the role played by a number of different endogenous factors. These endogenous factors included political conflict (Peters, Pierre and King, 2005; p1277) because it privileges the role of civil servants in the policy process (p1283) and ignores the role of interest

groups and other actors (Howlett, 2009; p249). It ignores policy learning (Howlett, 2009; p245), ideas (Campbell, 2001 as cited in Peters, Pierre and King, 2005; p1284) and that change and continuity are often observed as occurring simultaneously (Kay, 2005; p557). It ignores that institutions do not just promote stability but can also promote policy change (Howlett, 2009; p245) and also ignores the 'dynamic relationship among institutions' (Peters, Pierre and King, 2005; p1277). Indeed, Fiona Ross suggests that this inability to deal with change has led some path dependency advocates to 'relax a number of its core tenets' and adopt a more 'flexible formation' of path dependency (Ross, 2007; p594).

Core to understanding many of these endogenous change-drivers is the role of individual actors in the policy process, and this for me provides further reasons why historical institutionalism would not be an appropriate or helpful approach to the design of my research. There is an inherent determinism to path dependency – an 'explicable pattern' (Howlett, 2009; p248) that links a series of related events in a single, logical (Peters, Pierre and King, 2005; p1277) and increasingly 'locked-in' (Kay, 2005; p558) policy trajectory. This locked-in policy trajectory allows little role for individual actors and for individual agency. Indeed, this policy trajectory acts as a set of stable institutional arrangements that structure human political action. As such, path dependency focus on structure and, particularly, on how institutions represent, sustain and reinforce systems of values, norms and practices (Peters, Pierre and King, 2005; p1278). They ignore the role that individual actors play in the process of decision making. And core to my primary research question is human agency – whether individual actors engaging in the professions regulation policy process are motivated by public interests or private interests. For me, this means a research design that is rooted in methodological individualism.

There are, of course, alternative theories of human agency that are not rooted in methodological individualism. I do not intend to critically examine such theories. For me, all three models being examined in this research (both public interest and private interest) are rooted in individual rationality. Path dependency, and approaches that draw on structuralist or culturalist ontologies, assume layers of structures - political institutions, cultures, routines and conventions – that are more important and more enduring than the individual actors conducting strategic

interactions within them. Structuralist explanations always appear to reduce the human condition to little more than automatons, whose lives are affected in every way by structural arrangements that they cannot see, understand or change. More importantly for this research, structuralist approaches would seem incapable of explaining why there has been so much change and growth in the regulation of the professions over the past thirty years. They would also not be able to explain the nuanced differences over time and between professions regulation policy systems that I identified in chapter 2. Indeed, as Boettke and Coyne argue, the problem with non-methodological individualist models of social interaction is that any analysis of the dynamic nature of social change must focus on agents of that change (2005; p148).

Context, however, is important. There are a number of contextual issues that will affect the conduct of actors in the regulation policy process at key points, from the initial setting of the agenda, through to decisions about appropriate policy instruments and to implementation. Such contextual issues do help identify which actors are important in the policy process. Key actors will operate within and without interest groups, and this complex policy interest landscape will need to be mapped as part of the research.

Taken together, the discussions set out in this and the previous two chapters have significant implications for my research design. First, my research design needs to be rooted in methodological individualism; it needs to be able to examine the role that individual actors, alone or collectively, play in the professions regulation policy process. But my research design needs to take account of the incentives and constraints faced by these actors when they make decisions. These incentives and constraints arise from the institutional arrangements faced by actors. But these institutions are human creations that themselves are subject to change and conflict. And it is important that I do not overestimate the role of such institutions, assume institutions are stable and stabilising, or see institutions as the explanation of all political action.

Secondly, my research is not an attempt to understand the causal effects of professions regulation policy but rather the causal mechanisms underlying this policy

process. I am not looking to infer causal effects (King, Keohane and Verba, 1994, chapter 3); that is, I am not seeking to identify how much each causal variable contributes to observed changes in specific outcome or outcomes (the type or amount of professions regulation policy, the timing of that policy or explanations for policy change). Rather, the focus of my research is to explore the mechanisms that lead from cause to effect (Bennett and Elman, 2006; p457). Indeed, I am seeking to explore whether the causal mechanism is best described as motivation by public or private interests. This suggests a research design that is more qualitative in nature; more focused on *what* and *how* questions, where I seek to explore the causal mechanisms involved rather than measure their effect.

Thirdly, the research design needs to be cognisant of the fact that actors are situated in specific time-place-context situations. Professions regulation is not a single policy process but rather a nested, multi-layered process with nuanced differences both over time and between professions. This suggests that a macro-level study of professions regulation policy would face a number of challenges of definition, identification and measurement of the policy process and would also not be sufficiently nuanced or specific enough to identify and explore what motivates individual actors through the policy processes. It also suggests that there will be significant differences faced by actors, depending with which policy systems they are engaged; to some extent, given the complexity of the social world, each case may be unique in terms of interaction effects, strategic interaction, direction of causality and degree of equifinality or multifinality. (Bennett and Elman (2006; p457) describe equifinality as 'many different paths to the same outcome' and multifinality as 'many different outcomes from the same value of an independent variable, depending on context'.)

Finally, the level of complexity is such that a uni-method approach that utilises a single research tool and collects a single type of data is unlikely to capture the fullness of the policy systems or the incentives and constraints actors face. In particular, a uni-method approach may not enable me to distinguish between public interest and private interest motivations.

For example, as I established in section 2.10, public sector motivation theory (PSM) and bureau-shaping theories both include attraction to policy making as a key motivation force for individual actors. For PSM, attraction to policy making is one of the four domains used to test public service motivation. Attraction to policy making is the means by which public servants and professionals achieve their goal of serving the public interest. It is achieved through individual action. In contrast, in the bureau-shaping model, attraction to policy making is itself the goal – the means of achieving this goal (when it cannot be achieved through individual action) is bureau-shaping behaviour. Although the two models differ in terms of means versus end and individual versus collective action, the very fact that attraction to policy making is core to both models suggests to me that a single type of data or approach would not allow me to assess whether public interests or private interests are at play.

Given these conclusions, I have utilised a research design that involves a case study approach and a mixture of (predominately qualitative) methods to collect and analyse data.

3.4 Case study approach

This research requires the examination of strategic relationships between individual actors, acting alone and collectively, as the units of analysis across a complex actor landscape. More specifically, it requires the examination of rival theories of what motivates actors as they engage in these strategic relationships. As such, a case study approach is the most appropriate method to use. This approach is further indicated because the regulation policy process is made complex because it is not generally a single event, but rather the policy process includes agenda-setting and policy development stages, as well as implementation, and these operate at both the primary and secondary regulation levels.

The case study approach is appropriate where one wishes to investigate such complex social phenomena (Yin, 2003; 2)(Bennett and Elman, 2006; p457) requiring context-dependent knowledge (Flyvberg, 2006; p219) and a nuanced view of reality (p223); that is, how causal mechanisms function 'on the ground' (Crasnow, 2011;

p27). Such approaches take account of the complexity of public policy (Kay and Baker, 2015; p2) which are elaborate, multiple phenomena (p4) that include 'tipping points, high order interaction effects, strategic interaction, two-directional causality or feedback loops....equifinality and multifinality' (Bennett and Elman, 2006; p457).

This research compares public and private interest explanations of motivations of actors engaged in the professions regulation policy process. Its focus is whether actors are motivated by public or private interests. Core to this research is thus the causal pathways or mechanisms by which x leads y (or, more specifically, what is a more plausible account of x and how does it lead to y). Statistical, large n research designs are not an effective means of identifying causal mechanisms (Bennett and Elman, 2006; p261) because they focus on the effects-of-causes (Mahoney and Goertz, 2006 as cited in Crasnow, 2011; p33). (That is to say, effects-of-causes research designs focus on the probability of, and extent to which, variable(s) x^n will effect outcome(s) y^n)

A number of authors argue that case studies provide a more effective method of identifying causal mechanisms than statistical research. Crasnow identifies a long list of these writers, who include George and Bennett (2005), Collier, Brady and Seawright (2004), Bennett and Elman (2006) and Mahoney (2006) (Crasnow, 2011; p32) to name but a few. They contrast the effects-of-causes outlook inherent in statistical approaches with what Mahoney and Goertz called a 'causes-of-effects' outlook (2006, as cited in Crasnow, 2011; p33). John Gerring argues that case studies are useful when research seeks to identify specific mechanisms, or causal pathways, underlying political behaviour, which he suggests is increasingly seen as integral to causal analysis (2009; p5). This is a point made by George and Bennett (2006), who argue that only through in-depth case study work can the causal mechanisms be identified, and such evidence is a necessary condition for causal inference.

There are, however, problems with defining, designing and undertaking case study research. Case studies also have a poor reputation, perceived as having generalisation issues (Flyvberg, 2006; p219), of being subjective (Gerring, 2009; p6), of potentially biased case selection (p6), of potential for confirmation bias (Kaarbo

and Beasley, 1999; p371), and of problems with ‘informal and undisciplined’ research design (Gerring, 2009; p6). This may partly be explained by the association of case study approaches with qualitative research, and thus the general ‘bad rap’ that qualitative research has in political science, both because of some questionable methodological approaches, because of problems with representativeness, reliability, objectivity, interpretation and generalisability (Devine, 2002, p204-207) and also because some quantitative researchers see statistical analysis as ‘the only road to truth in the social sciences’ (King, Keohane and Verba, 1994; p4).

Robert Yin (2003; p13) has identified that the case study method can lack rigour, which Diefenbach (2009; p876) suggests includes weaknesses and limits of methods and theories, selection of units of investigation, issues with case selection, interpretation and presenting data and internal and external validity. This research will need to address these perceived weaknesses and be cognisant of the need for robustness and validity throughout. It is important to acknowledge and discuss these issues and state how my research design intends to deal with these problems.

John Gerring argues that the case study method is subject to a ‘definitional morass’ (Gerring, 2009; p17)(Gerring, 2004; p342). This is partly because the term ‘case’ has a variety of meanings, each with empirical implications (Kaarbo and Beasley, 1999; p372). Gerring identifies six different ways of understanding case studies and, having criticised these six definitions, goes on to posit his own conception, defining case studies as:

“..the intensive study of a single case where the purpose of that study is – at least in part – to shed light on a larger class of cases (a population).” (Gerring, 2009; p20)

Gerring (2009) goes on to distinguish between case study ($n=1$ research) and case study research, which may involve multiple cases. He also makes clear that while case study research aims to ‘shed light’ on a population, the case itself is not perfectly representative of that population because ‘unit homogeneity across the sample and the population is not assured’. An alternative definition is given by Robert Yin. For Yin, the case study approach:

“....tries to illuminate a decision or set of decisions: why they were taken, how they were implemented, and with what result.” (Schramm 1971. Quoted in Yin, 2003; 12)

Adam and White (1994, as cited in Jensen and Rodgers, 2001; p236) provide a definition specific to public administration research as being ‘conducted within a single agency or political jurisdiction, or research that spanned a handful or less of single agencies or political jurisdictions for comparative purposes’. This definition highlights one of the significant problems in case study research designs, in that it is so conceptually wide as to potentially cover most types of empirical research.

Both Gerring and Yin see the case study as a method, whereas other writers suggest that the case study is an approach (Hyett, Kenny and Dickson-Swift, 2014; p1), research strategy (Verschuren, 2003; p122) or that case studies involve different assumptions about the nature of the social world and how it should be studied, as a ‘paradigm’ in its own right (Gomm, Hammersley and Foster, 2000; p3). As both a research strategy and paradigm, these writers would closely align the case study approach with qualitative methods and would also assume a linkage between interpretatism and qualitative research.

Indeed, a number of writers constrain their definitions of case studies by limiting them as qualitative research methods. Orum et al define a case study as:

“...an in-depth, multifaceted investigation, using qualitative research methods, of a single phenomenon.” (Orum et al, 1991, as cited in Kaarbo and Beasley, 1999; p372)

In doing so, I would argue that those who associate case studies with solely qualitative research and an interpretist paradigm negate the possibility of mixed methods case studies that combine qualitative and quantitative analysis, or case study approaches that are not located within an interpretist paradigm. I would argue that the case study is a method, useful and appropriate for answering particular types of research question, such as the core question driving my research.

3.4.1 Cases selected

I have selected five UK professions for this research, which have been selected against four criteria: (1) because they each have experienced policy change or tensions over the last ten years; (2) because they demonstrate differences in terms of the meta-policy framework and interest group landscape; (3) because they differ in terms of the level of wider empirical research and (4) each of the professions is at a different stage of professionalisation and different stages of regulation. Table 7 overleaf sets out the five professions and the assessment of each against these three criteria.

I use these five case study professions to focus my comparison of public and private explanations of the motivations of actors engaging in the policy process. In undertaking this comparison, I have focused on three key groups of non-political actors, namely regulators, professions and the public. In both public interest and private interest models, these are three pivotal groups. The empirical chapters of this thesis cover these three non-political groups and examines each in relation to the five case study professions.

Of course, it could be argued that a number of other professional groups would meet these criteria. As I established in chapter 2, the legal professions (particular solicitors) share similarities with pharmacists in terms of the history and progress of their professionalisation, the development of related proto-professions (paralegals and legal executives for solicitors, pharmacy technicians for pharmacists) and recent changes from statutory: professional body to statutory: independent forms of regulation. Indeed, in the first two of these developments, pharmacists, solicitors and architects share a similar history and development and, to some extent, solicitors would be more of an interesting contrast to pharmacists than architects because of the European Union dimension.

Case study profession	Policy change or tension	Meta-policy framework and interest group landscape	Extent of relevant empirical evidence
Hearing aid dispensers	Regulated since 1970. Change of regulator and regulatory framework in April 2010.	One main professional interest group. One main consumer interest group. Health professional regulation. Private sector professionals.	None.
Psychotherapists	First proposal to regulate in 1972. Proposal to regulate in 2007. Policy reversal in 2011.	Over 50 professional interest groups. Health professional regulation (contested by some professionals). Mix of private, voluntary and public sector.	None
Teachers	Independent regulator since 2002, abolished in 2012.	Six unions representing professional interests. Self-regulation model. Public sector employed.	Impact of teacher licensing researched in the United States. Limited literature on regulation in UK.
Architects	Regulated since 1932. Change in regulator in 1997. Policy tensions between regulator and professional body.	Single, strong professional body. Private sector.	Some
Pharmacists	Regulated (statutory: professional body) since 1858. Independent regulator since 2009 created by split of professional body.	Single, strong professional body. Regulation of profession and pharmacy business. Mostly private sector employed but main funding stream from public sector.	Impact of pharmacy regulation well researched in Europe and States.

Table 7: Case study professions and selection criteria assessment

Architects and pharmacists are both covered by profession-specific EU mutual recognition of professional qualifications arrangements, solicitors are not covered by such arrangements. However, architects as a profession have two advantages over solicitors, being that (a) they are relatively under-researched (there is a considerable literature on the regulation of legal professions) and (b) there is an interesting externalities dimension to the regulation of architects because of the long term impact that buildings have on the environment and the effect on third parties not involved in the contractual arrangements between client and architect.

Public interest theories (specifically, public service motivation) assume that regulators and professions are motivated by the common good. In doing so, they are working in the best interests of the public. As I have outlined above, public service motivation neglects to answer some key questions about this process; how do civil servants and others identify the ‘public interest’? What role do the public play in this process? Private interest models, specifically rent seeking and bureau shaping, implicitly assume that the public would be unable to resolve collective action problems and that professions and regulators would be free to further their own interests. Table 8 below sets out the key actors examined in this research and the models used to explain their behalf in the comparison between public and private interest explanations.

	<i>Public</i>	<i>Private</i>
<i>Regulators</i>	Public Service Motivation	Rent seeking
<i>Professions</i>	Public Service Motivation	Bureau-shaping
<i>Public</i>	Public steward theory	Collective action problems

Table 8: Relevant theories by type of actor

3.4.2 Data

I have established the complexity of the professions regulation policy process, reflecting temporal and sectorial differences between different regulatory regimes, the interactions of various actors individually, in groups and within organisations. There are challenges posed by bounded rationality and uncertainty, as well as institutional incentives and constraints. There is also some level of cross over between public and private interest explanations, even though these are generally presented as opposing theories. Thus, a single data source is unlikely to capture the depth and complexity needed to identify whether public or private interest theories provide a more convincing explanation of actor motivations in the professions regulation policy process.

Rather, a number of data are necessary. In each of the three empirical chapters of this thesis, I detail the specific data and analytical methods used to examine public

versus private interest explanations. Here, I want to broadly introduce the four types of data used in this research. I utilise two types of primary and two types of secondary data in this research. The table below sets out the data used in each of the empirical chapters; these data are then briefly described.

<i>Chapter</i>	<i>Data</i>
<i>Case studies</i>	Published documents, minutes, reports and academic publications
<i>Regulators</i>	Budget data from published annual reports, published policy documents, interviews
<i>Professions</i>	Published policy documents, other published reports and documents, interviews
<i>Public</i>	Survey data, published policy documents, other published reports and documents

Table 9: Data utilised

Through this research, I have generated two forms of primary data. I conducted $n=46$ semi-structured elite interviews with government policy makers, regulators, professional bodies, consumer advocacy groups and other key stakeholders engaged in the professions regulation policy process. Ethical approval to conduct these interviews was granted on 2nd March 2012 by the Law Research Ethics Panel at King's College, London (the relevant panel for my department); reference REP-L/11/12-6. Interviews were conducted between March 2012 and July 2013. Interviews were generally conducted face-to-face in a venue selected by the interviewee, usually their office. With the permission of the interviewee, interviews were recorded and fully transcribed (nine interviews were conducted by telephone, for which notes were taken). An outline of the interview format is provided in the appendix (section 9.2). Interviews were fully transcribed¹⁷ and coded in nVivo 10; the first and second stage coding frameworks were used across all qualitative data (primary and secondary) and are set out in the appendix (section 9.5). My research focuses on the motivations of regulators and professional bodies when they engage in the professions regulation policy process. As such, the interviews focused on

¹⁷ I conducted $n=44$ interviews (two interviews involve two interviewees). $N=35$ interviews were recorded and transcribed in full.

individuals actively engaged in that policy process. I have not interviewed regulatory agency staff involved in the day-to-day administration of registrations, educational approvals or fitness to practice case management, 'rank and file' members of the relevant professions or individuals who have used the services of my case study professions.

The second type of primary data generated during this research was a survey of $n=187$ students and staff at King's College London. Ethical approval to conduct this survey was granted on 21st November 2012 by the Law Research Ethics Panel at King's College, London (the relevant panel for my department); reference REP-L/12/13-4. In line with King's research policy at the time, an invitation email was sent by the research office to all students and staff at King's on 14th December 2012. The objective of this survey was not to test whether the public as a group of policy actors are motivated by public or private interests. Rather, I expect there to be key observable differences between these theories in terms of how the role they ascribe to the public in the policy process. In particular, I use these survey data and wider discussions to explore two assumptions about the behaviour of public service motivated civil servants and professions. The first assumption, suggested by David Houston in a paper to the Mid-West Political Science Association conference in 2007, suggests that the public see civil servants as guardians or 'stewards' of their interests. My second assumption is that there should be some mechanism by which civil servants will seek, reflect and (if required) change their actions in light of the views of the public around what is the public interest.

There are two broad secondary data I use in this research. The first of these is annual reports published by each statutory regulatory body. These reports are public documents, and were accessed via the relevant agency's website or through The Stationary Office website. These reports contain budget data used to examine the key predictions of from the bureau-shaping theory - namely that regulator staff will engage in collective action to re-organise their agencies. This re-organisation will affect the budgets of their agencies and will enable them to focus more on policy work (the interests they seek to achieve). In chapter 5, I detail my reasons for using these data (and for using published data rather than collecting budget data through this research), the data limitations, how I have undertaken the analysis and what

conclusions I draw from this work. I then also use a range of published policy documents, position statements, reports and other published material produced by government departments, regulators, professional bodies and consumer advocacy groups in relation to the professions regulation policy process for my five case study professions. Google searches were conducted to identify these documents, using key word searches including the profession's name, the regulator's name, and by searching specific and relevant websites. By their nature, these were public documents; they provide collective views, and views that were intended to be published. As such, they only provide a partial picture of the motivations of civil servants and professions engaging in the policy process.

3.4.3 Analytical approach

Broadly speaking, I have used content analysis as the dominant analytical approach for this research. Content analysis is:

“...a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use.” (Krippendorff, 2004; p18)

Content analysis has two facets, quantitative and qualitative. The quantitative element of content analysis involves counting the number of times that key words, phrases or other units of analysis occur in relevant documents. This allows some inferences to be made about the relative importance of issues. The qualitative element allows for the interpretation of these results using relevant theories (Weber, 1990; p70). Two issues are of great importance when undertaking content analysis, namely the coding framework and the sample of documents included. I included documents published by government, the case study professions, relevant regulatory bodies, wider meta-regulation documents and charitable advocacy groups associated with the policy area, where such documents relate or mention regulation.

Content analysis is likely to help identify *how* regulation policy has developed but is unlikely to address the *why*. This is particularly significant because regulatory policy outcomes might provide evidence in support for both public interest and private

interest analyses (Rubin, 2010; p559). The types of documents analysed will generally not be the work of a single person: rather, they will be the collective work of a number of authors, often going through several iterations and sign off procedures before finally being published. Individual actors are therefore unlikely to express their motivations for trying to influence the regulatory policy process, particularly if these are driven by material or wider self-interest. More principled arguments, such as being '*in the public interest*', are often used to shield self-interest or to widen the appeal of change beyond a small interest-group (Chong, 2000; p142).

Therefore, this research utilised further qualitative evidence through the use of interviews. Interviews were conducted with key actors across the interest group landscape for each of the five case study professions. Although interviews are central to the study of politics, there is a surprising dearth of literature on the method and its pitfalls (Burnham, Lutz, Grant and Layton-Henry, 2008; p232). Transcripts of all interviews have been analyzed using the coding framework utilised for the content analysis, enabling comparison between different sources of evidence.

4 Case study professions

4.1 Introduction

The case study narratives outlined here do not include any discussion of the three models being examined in this research. However, I draw on these narratives in my analysis of the three models in each of the subsequent chapters of this thesis. One of the key challenges I faced in undertaking this part of my research is the disparity between the professions in relation to academic literature on their history, development and regulation. Some of the professions (most notably pharmacy) have been written about extensively. Others, most notably hearing aid dispensers, are almost entirely absent in both the academic or wider literature.

4.2 Architects

Architecture, as a distinct, institutionalised profession, is a recent invention (Scrivano, 2004; p345). The term 'architect' originates in ancient Greece and was, until the medieval period, associated with master craftsmen. In the period leading to the industrial revolution, architecture was a vocation for classically educated gentlemen (Neveu, 2008; p1), focused on design and aesthetics rather than the technical and mechanical aspects of building design. Patrick Dunleavy (1981; p12) suggests that architecture has a long history as a 'gentlemanly profession'. There is a long list of such gentleman, and other lists of individuals who trained in the trade of architecture through the apprenticeship system. Christopher Ball, in his report to the RIBA on the future of architects' regulation, suggests that Thomas Hardy was 'an architect before he was a writer' and notes that he was apprenticed to a local church architect at an early age (Ball, 2009; p8). Indeed, arguably modern architects can trace their lineage to the technical and structurally minded estate surveyors of seventeenth and eighteenth century England (Myers, 2013) more than to the likes of Nicholas Hawksmoor, 'Capability' Brown or Robert Adams. Starting in the latter half of the eighteenth century, architects began to define and differentiate their professional competences and responsibilities (De Lorenzo, 2011), although it has been argued

that the profession still faces issues in self-definition, at least at the European level (Champy, 2008; p657).

There is also a limited research on the history of the profession (Neveu, 2008; p1), although there is a substantive literature on this history of building design styles and architectural history (Arnold, 2002). Few works have been published since Spiro Kostof's comparative review of the profession in 1977 (Scrivano, 2004) and architecture remains largely neglected academically as a profession (Cohen et al, 2005; p776). A number of sociological investigations of the profession have been published, including Judith Blau's examination of architects in New York City in the 1970s and the critical sociological (and largely impenetrable) perspective of Paul Jones 2011 book *The Sociology of Architecture: Constructing Identities*. Despite this lack of research, it is possible to map the professionalisation of architecture over the course of the nineteenth and early twentieth centuries, using the criteria identified in chapter 2. Indeed, several scholars place the beginning of the professionalisation process at the start of the nineteenth century (Holliday, 1984). Table 10 overleaf traces the professionalisation process for architects against these five criteria.

Criteria	Date	Comment
Voluntary association	1834	Several short-lived clubs established in eighteenth and early nineteenth centuries. Royal Institute of British Architecture established in 1834.
Education and training	1880s	Move from apprenticeship and amateur model to university based education and training largely completed by 1880s.
Professional conduct	1850s	Codes developed by RIBA from 1850s onwards.
Exclusion of unqualified persons	1937	RIBA received Royal Charter in 1837 and Chartered Architect introduced at that time. Protection of title introduced in 1937.
Statutory regulation	1937, 1996	ARCUK established as <i>statutory: independent</i> regulator in 1937. Current regulator, ARB, replaced ARCUK in 1997.

Table 10: Key stages in the professionalisation of architects

Beyond the key stages of professionalisation set out in table 10 above, the architect profession has developed and changed much over the past eighty years. Partly, this reflects wider changes in the construction industry and the profession's vulnerability to changes in the 'political, economic and social climate' (Cohen et al, 2005; p776), most notably downturns in construction associated with recessions. There have been wider changes, too: a change in sector of employment from local authorities to private practice (Dunleavy, 1981), change in the organisational form of architecture firms from partnerships to incorporated bodies (Pinnington and Morris, 2002), the increasing role of architects firms as 'knowledge-based organisations' (Winch and Schneider, 1993) and the internationalisation of professional service firms (Pinnington and Sandberg, 2014) (Muzio and Faulconbridge, 2013).

As with a number of other professions (including, in relation to this research, hearing aid dispensers, pharmacists and psychotherapists), architects have both commercial and professional interests. But there is a further element that also generates tension for the architects profession - creativity. Cohen et al (2005; p782) identify three dominant discourses within the profession: creativity, business and 'serving the public', and suggest that these discourses often create tensions and conflict within the profession, something that Winch and Schneider also identify (1993; p934). For my case study professions, architecture is unique in relation to its creativity; not least because of the long term impact such creativity (building design) can have on public spaces and political geography.

With the exception of pharmacists, the statutory regulation of architects in the UK has the longest history of the professions examined in this research, which is made complex by European Union law relating to mutual recognition of architects' qualifications and ability to practice across the twenty eight member states. The level of complexity of further increased by the role of the Royal Institute of British Architects (RIBA), the main professional body and an organisation recognised by the Crown under Royal Charter.

The professional title 'architect' is protected in law, and only those individuals who are registered with the ARB are able to use that professional title¹⁸. This protection of title dates to 1931, when the Architects (Registration) Act established the Architects Registration Council of the United Kingdom (ARCUK), a move that was largely the result of campaigning by RIBA (Ball, 2009). In the early 1990s, the ARCUK recommended to the then Conservative government that the Act be reviewed. The government appointed Sir David Warne to undertake this review, who subsequently recommended abolition of ARCUK and deregulation of the title 'architect'. This proposal was initially supported by RIBA, which then changed its stance following lobbying by ordinary members for the retention of protection of title (Ball, 2009).

In response, the Conservative government proposed to reconstitute and rename the statutory regulator. In 1996, ARCUK became the ARB and in 1997, the Architects Act consolidated previous legislation and established a new regulatory framework. The key changes made to the regulatory body were changes to its rule-making and disciplinary powers, a reduction in the size of the board from 77 members to 15 and a change in its composition from profession-led to lay majority (Department of Environment, 1994). This loss of profession control of a regulator was somewhat unique in the 1990s; however, it is the beginning of a period of rapid change in professions regulation in the UK during the 2000s; changes that have seen most professions regulatory boards become smaller, with lay majorities, a split of professions' promotion and regulation functions and the introduction of 'meta-regulators'¹⁹. These changes and their implications were discussed in more depth in chapter two.

The regulation of architects in the UK is complicated by the role of the main professional body, RIBA, and by European law. The RIBA received its Royal

¹⁸ The UK typically regulates by title and not by function.

¹⁹ Meta-regulators are government organisations that over-arch a number of frontline regulatory bodies. Their stated function is to ensure consistency of approach and independence of frontline regulators. The Professional Standards Authority for Health and Social Care Regulation, for example, over sees the nine professions regulators in that field and the Legal Services Board performs a similar role in terms of the regulation of legal professions. The boards of these meta-regulators typically have no professions representation.

Charter²⁰ in 1837, enabling it grant the protected title of 'Chartered Architect' to individual members who meet certain educational and practice requirements. There is therefore a body of architecture professionals who may use the protected titles of 'architect' (regulated by the ARB) and also 'Chartered Architect' (RIBA). A common theme of both regulation by ARCUK and ARB is the less than congenial relationship between the regulator and the main professional body, RIBA (Ball, 2009). Despite much joint working with RIBA, the ARB thought it necessary to establish 'clear blue water' between itself and the professional body (ARB, 2006) and as recently as 2008, RIBA was actively seeking an alternative approach to statutory regulation, and one that preferable involved them as both professional body and regulator.

Architecture is also a profession governed by European Union law in relation to the mutual recognition of professional qualifications. These regulations are designed to enable the free movement of professions across the twenty eight member states of the EU. Architecture is a profession where minimum training standards have been 'harmonised'²¹ across all EU member states, enabling automatic recognition of qualifications gained anywhere in the EU²². From 1999, a common theme in the annual reports and business plans of the ARB was the need to implement the EU directive and the implications of its implementation. In 2000, the ARB joined the Architects Council of Europe, a forum of professional bodies and regulatory agencies established to develop the profession within a European framework. It also joined the European Network of Architects' Competent Authorities, with the aim of developing policy networks to prepare for the implementation of the directive. Over the period from its implementation in 2005, the ARB recognised the financial and workload implications of these regulations, both in terms of the number and complexity of applications for registration.

²⁰ A Royal Charter is a formal document which provides certain Crown privileges to organisations. In terms of professions, a Royal Charter grants some professions the right to protect the title of 'Chartered' professional. Professions such as accountancy, engineering and finance are often regulated via Royal Charter awarded to the relevant professional body and not via an independent statutory regulator. A small number of professions (of which architect is one) have both chartered status and a statutory regulator.

²¹ However, member states are able to set educational requirements above this minimum. The UK has the highest level of requirement, in terms of years required to train and extent of practical experience needed before registration.

²² Architects, doctors, dentists, midwives, nurses, pharmacists and veterinarian surgeons are all covered by the automatic recognition system. Other professions are covered by a 'general system', which does not involve automatic recognition of qualifications but provides a process by which qualifications gained in one member state can be assessed when a professional wishes to practice in another member state.

In June 2008, changes were finally made to the Architects Act 1997 to implement this directive. It also led the ARB to attempt to outsource some of its functions in terms of setting exams for registration for those individuals who hold qualifications not recognised under European law. This attempt was later abandoned and this service remained in-house. Indeed, throughout the period, the EU accounts for most of the external factors identified in the regulator analysis set out in chapter five. These factors include policy proposals by the UK Government or EU directives, changes in the operating environment (including level of disciplinary investigations or prosecutions), changes in organisational structure or staffing or to the rules and standards of the ARB. For those factors identified as external drivers, almost all related to EU directives.

4.3 Hearing Aid Dispensers

Hearing aid dispensers are individuals who assess and test someone's hearing and prescribe hearing aids²³, where such hearing aids are provided by retail sale or hire. The development of the profession can be traced to the post Second World War period, when technological developments such as the invention of the transistor in 1947 and the introduction of integrated circuits in 1958 (Mudry and Dodele, 2000) began the process of changing devices that simply amplified sound into highly specialised pieces of equipment. Unlike professions such as architecture and pharmacy, there is also no extant academic or wider literature on the history of the profession, its professionalisation or its regulation; indeed, much of this section has been developed from primary sources, including minutes of meetings of relevant regulatory bodies.

In the UK, hearing aid dispensers have been represented by a professional body since the 1950s and been regulated by both protection of title and of function since

²³ The legal definition of a hearing aid dispenser, as included in s39A(1) of the Health Professions Order 2001 (as amended by the Health Professions Order (Hearing Aid Dispensers) 2009). Prior to this, as person was defined as a dispenser if they undertook 'oral negotiations with a view to effecting the supply of a hearing aid' (s14 of HAC Act 1968).

1970. Table 11 sets out the professionalisation process for hearing aid dispensers, using the five criteria specified in chapter 2.

Criteria	Date	Comment
Voluntary association	1950s	The Society of Hearing Aid Audiologists was formed in 1950s. British was added to name in the 1980s (partly to distinguish it from the newly formed Irish equivalent). There are several smaller representative organisations and other bodies that cover audiology as a whole ²⁴ .
Education and training	1970s, 2008	A company-based training and external examination process was introduced with statutory regulation. This was replaced with a foundation degree in 2008.
Conduct	1972	Introduced with statutory regulation.
Exclusion of unqualified persons	1972	Introduced with statutory regulation, following grandparenting period.
Statutory regulation	1970, 2010	Calls for regulation from 1960. Private Members' Bill adopted by government in 1968. Implemented in 1969/70. Regulation transferred to HCPC in 2010.

Table 11: Key stages in the professionalisation of dispensers

Hearing aid dispensers are regulated in fourteen member states of the European Union, in Australia and in many states in the USA. In the UK, statutory regulation was first proposed in 1960 by Joyce Butler MP (Hansard, HC Deb 18 July 1960 vol 627 cc13-14). In 1964, Laurie Pavitt MP presented a Private Members' Bill which, following much amendment and eventual support by the government, became the Hearing Aid Council Act (1968) (HAC, 2009; p51). The Act was extended to Northern Ireland in 1975 and was substantially amended in 1989. Dispensers were regulated

²⁴ The British Academy of Audiology is the professional body for audiologists, of which hearing aid dispensers/audiologists are one discipline. The British Society of Audiology was formed in 1966 and focuses on research, education and training of audiologists. The Association of Independent Hearing Healthcare Professions is a small, largely trade body specific to the hearing aid industry. In addition to the statutory register of hearing aid audiologists managed by the HCPC, some hearing aid dispensers are also registered as audiologists with the voluntary Registration Council of Clinical Physiologists (RCCP) and may also be entitled to register with the PSA accredited voluntary register held by the Academy for Healthcare Science.

by the HAC until April 2010, when many of its functions were transferred to the HCPC.

The HAC had statutory functions of maintaining registers of those persons acting as dispensers of hearing aids and those persons employing such dispensers. Its role was to set standards of entry to the profession, establish a code of professional conduct, investigate complaints against dispensers and their employers and take appropriate disciplinary action. Members of the Council were appointed by the Secretary of State for Business, Innovation and Skills and included an independent chairman and persons capable of representing hearing aid users, registered dispensers and those with medical or technical knowledge of hearing loss.

One of the interesting facts about the HAC is that none of the three pieces of legislation that set out its statutory powers resulted from government policy (HAC, 2010; p56). The original Act and the two subsequent amendments were each the result of Private Members' bills, and in each case the sponsoring MPs were either hearing aid users or people associated with people with hearing loss and consumer groups representing them. For example, Laurie Pavitt (who proposed the first Bill) was a hearing aid user who campaigning thorough his political career for people with hearing loss. Emma Nicholson, one of the sponsors of the Bill which eventually became the 1989 amendment, was also a hearing aid user.

The only government sponsored legislation relating to the HAC concerned its abolition. In the 2004 budget, Gordon Brown announced that Philip Hampton had been appointed to review the effectiveness of business regulation in the UK. The next year, Hampton published a report *Reducing Administrative Burdens* recommending changes to thirty one different regulators, including the abolition of twelve different bodies (HMT, 2005). The HAC was one regulator identified for abolition, with a proposal that its functions should be transferred to a new thematic regulator, the Consumer and Trading Standards Agency. The Hampton Report was well received by the Government and on Budget Day 2005, the Chancellor of the Exchequer announced that the Government had accepted Philip Hampton's recommendations (HMT, 2005).

An examination of the minutes of the HAC for 2004/5 suggests that the Council was unaware of Hampton's work or the likelihood of his recommending its abolition. Indeed, minutes of strategy days held by the Council in June 2006 make it clear that the Chancellor's announcement had come as a surprise to the Council, professional bodies and others involved in the regulated profession. The Council's 2005-6 annual accounts, laid before Parliament in the summer of 2006, states:

"....this announcement by Government was a catalyst for a significant and inclusive process of consideration about how and by whom hearing aid dispensers should be regulated." (HAC, 2006; p8)

During 2005, the Council responded to two government consultations that would likely affect the future regulation of the profession. Both responses share a policy position, namely that the Council ought to be abolished but that government proposals for successor arrangements should be changed so that the HCPC would regulate dispensers in the future. Reports published by the HAC suggest that these proposals arose through a process of engagement and discussion with key stakeholders in the regulated profession, consumer advocacy groups, other regulators and the Council itself.

Published documentation suggests that not all stakeholders supported this proposal; some wanted to retain a separate regulator for dispensers, others wanted dispensing to be deregulated, and others still wanted a different successor body to be considered. It can also be suggested that there was initial doubt and concern about the proposals to abolish the Council and the discussions around successor arrangements.

A review of the documents and minutes from this time does not suggest the professional body, the British Society of Hearing Aid Audiologists (BSHAA), was lobbying for this change, or even aware of the proposals before the 2005 announcement. It seems to have taken some time for the professional body to see the advantage in the proposed changes.

At the end of 2005, the Government dropped its proposals to create a national regulator called the Consumer and Trading Standards Agency (CTSA) and opted instead to create a body that would co-ordinate with local trading standards departments, to be known as the Local Better Regulation Office. Published responses to the consultation on the creation of the CTSA suggest that the proposals were opposed by many in local government, including the Local Government Association, Trading Standards Institute and many local authorities.

Over the next couple of years, the Council's executive team and board worked hard to convince Government to implement proposals to abolish it and transfer its regulatory functions to the HCPC. Council minutes suggested this included regular meetings with the Department for Business, Innovation and Skills (the Council's sponsoring department), the Department of Health, other relevant regulators and those involved in better regulation policy. The Council submitted evidence to the Health Select Committee's inquiry around audiology services (Health Select Committee, 2007). Over this period, the professional body BSHAA also began to lobby for the abolition of the Council, although this was limited to writing several letters to the relevant Ministers.

Then in late 2007, a number of Parliamentary Questions were asked concerning the HAC and lack of progress towards its abolition. These questions were asked by individual MPs with interests in disabled rights, hearing loss and issues affect deaf people, including members of the All Party Committee on Deaf Issues. It was in response to these questions that the government first announced that the HCPC would be the successor body to the HAC (Hansard 16 Oct 2007: Column 992W).

In early 2008, the Government decided to move late amendments to the Health and Social Care Bill to affect the dissolution of the HAC. The amendments were moved on 14th May 2008 in the Grand Committee of the House of Lords (Handard 14 May 2008 : Column GC379). Council minutes from this period suggest that it became aware of the Government's intentions at some point after its meeting on 27th March of that year. The amendment passed and the Bill received the Royal Assent in July 2008.

Following Royal Assent, a four-party working group was convened, including officials from the Department of Health, BIS, HAC and HCPC. The working group put together arrangements to implement the provisions of the Health and Social Care Act 2008 relating to the abolition of the HAC, including drafting the required secondary legislation.

In April 2009, the Department of Health published a consultation document with the necessary legislation for dispensers to be regulated by the HCPC (DH, 2009). Thirty three individuals and organisations responded to this consultation, most of whom supported the proposals. The Department of Health published its response to the consultation in September 2009 and the Health Professions (Hearing Aid Dispensers) Order was laid before Parliament in December 2009 and received Royal Assent on 10th February 2010. On 31st March 2010, the HAC ceased to be the statutory regulator of hearing aid dispensers and the HCPC became the responsible body. The HAC was officially abolished on 31st July 2010.

4.4 Pharmacists

Like teachers and architects, pharmacists and the practice of pharmacy have a long history. The modern profession began to emerge in the eighteenth century with the introduction of chemical medicines (Matthews, 1957) and the profession's development, particularly in relation to its regulation, is closely related to that of medical doctors. Although the word pharmacy can be dated to the 1500s, it is not until the 1830s that the word pharmacist can be found and is taken to mean a person who prepares and dispenses medicines.

As the pharmacist profession developed in the early nineteenth century, it attempted to differentiate itself from chemists and druggists, commercial tradespeople who were not involved in the preparation and dispensing of medicines, and from apothecaries, the ancestors of today's general practitioners. It also sought to protect itself through legal means, much as (and often in competition with) those in the medical and apothecary professions. In medieval times, apothecaries were individuals who sold wines, herbs and spices. By the 1700s, apothecaries had developed into some of the most common medical practitioners, described by Adam

Smith in the Wealth of Nations as 'the physician of the poor in all cases, and of the rich when the distress or danger is not very great' (Smith, 1776 (1910) as cited in Holloway, 1966; p108). They had established a worshipful company in the city of London in 1617 and were actively attempting to protect their professional interests.

In 1815, the Apothecaries Act introduced compulsory apprenticeship and formal qualifications for apothecaries under the license of the Society of Apothecaries. This Act was intended to suppress the 'practice by so-called quacks and bone-setters' (Rivlin, 2009; p3) and stated that:

"...much mischief and inconvenience has arisen, from great Numbers of Persons in many parts of England and Wales exercising the functions of an apothecary, who are wholly ignorant and utterly incompetent...." (Apothecaries Act 1815, clause VIII)

One of the deficits of this Act was that it failed to provide an adequate definition of an apothecary, their functions and duties, beyond a reference to 'a mere retailer of simples, and the unpaid compounder of physician's prescriptions' (Bishop and Gelbeir, 2002; p628). It also appears to have galvanised the emerging pharmacist profession into taking action to protect its interests, with a campaign to ensure that druggists and chemists were exempt from the provisions of the Act. An association of druggists was established in 1802 which successfully gained exemption for druggists from the 1815 Act (Loudon, 1999; p197). The association did not last long. An equally short-lived body, the General Association of Druggists and Chemists of Great Britain, was formed in 1829 to campaign against further legal monopolies for the medical profession (Bell, 1880; p78). This eventually led to a group of chemists and druggists convened a public meeting in London in 1841, and proposed the formation of the Pharmaceutical Society (the forebearer of the Royal Pharmaceutical Society, the current professional body). John Hunt (in Anderson (eds) 2005; p77) claims that this is the beginning of the modern pharmacy profession, although he recognises that the society faced initially turbulent times. The Society's founding aims were to unite the profession into one body, to protect its members' interests and to advance scientific knowledge. The Royal Charter of Incorporation, granted to the Society in February 1843, gave the purpose of 'advancing chemistry and pharmacy and promoting a uniform system of education' precedence over 'the protection of those who carry on the business of chemists and druggists.' (RPSGB, undated).

Within ten years of the receiving the Royal Charter, the 1852 Pharmacy Act established a register and restricted to those who had taken the Pharmaceutical Society's exams. However, the Act did not restrict the practice of pharmacy to examined and registered people, nor provide a legal definition for the trade and practice of pharmacy. At the time, there was considerable hostility to the creation of a pharmacist monopoly (Hunt, in Anderson (eds) 2005; p79) and it was later commented in the House of Commons that the 'whole substance of this Bill was contained in a single sentence' (Hansard, HC Deb 29 March 1865 vol 178 cc470-9). A rival, but short-lived, professional body was established in 1860. This United Society of Druggists and Chemists set up meetings across the UK to campaign against the 'unwarrantable interference of the Medical Council with the rights of dispensing chemists.' (Bell, 1880; p323). Although Bell was rather dismissive of the role of the United Society, it should be noted that he was a founding member of the Pharmaceutical Society, and thus not entirely objective. Hunt suggests that a key difference between the two organisations was in relation to the conception of pharmacy as a profession (Pharmaceutical Society) or as a trade (United Society) (Hunt in Anderson (eds) 2005; p102). This trade versus profession tension has been central to the history of pharmacy (Taylor and Harding, 2001; p19). For me, it continues to reverberate today, particular in relation to community pharmacy.

Eventually, the two organisations merged and began campaigning for legal restrictions and protections for the pharmacy profession. The result of this campaigning was the Pharmacy Act of 1868. Although only ten years separated the introduction of statutory regulation of doctors and pharmacists, the framework that was applied to the latter was entirely different to that created for the former (and was in line with, and a detailed development of, the framework established by the Apothecaries Act of 1815). Whereas medical education was delivered through a number of (often competing) medical colleges with no overarching, single organising body, pharmacy education was very much under the control of the Pharmaceutical Society, delivered through a school of pharmacy that it had established (Taylor and Harding, 2001; p9). In the 1850s, Parliament had established a separate, independent statutory board to coordinate and accredit the education and training provided by medical colleges; in contrast, in the 1860s, Parliament simply gave a legal monopoly to the systems already established by the pharmacy professional

body. This model, which I termed *statutory: professional body* in section 2.5, became the standard approach for regulating other professions. In relation to pharmacy, this framework remained largely unchanged until 2010 when the regulatory functions of the Royal Pharmaceutical Society were transferred to a new, independent statutory body, the General Pharmaceutical Council. I shall address this change in the concluding paragraphs of this section.

Criteria	Date	Comment
Voluntary association	1841	Royal Pharmaceutical Society of Great Britain formed. Earlier and subsequent, short-lived associations established between 1750s and 1920s.
Education and training	1852	Formal role of RPSGB in education and training established by statute, gradually replacing apprenticeship model.
Conduct	1868	Introduced with statutory regulation.
Exclusion of unqualified persons	1868, 1920s	Introduced with statutory regulation. Dispensing of medicines by doctors regulated from 1920s.
Statutory regulation	1868, 1933, 2010	Introduced as <i>statutory: professional body</i> form in 1868, widened in 1920s and 1930s and reconstituted as <i>statutory: independent</i> in 2010.

Table 12: Key stages in professionalisation of pharmacists

While some commentators (such as John Hunt, Kevin Taylor and Geoffrey Harding) have suggested that the formation of the Pharmaceutical Society in 1841 marks the birth of the modern pharmacy profession, there was still some growing up to do. The first half of the nineteenth century saw the differentiation of pharmacy from other related professions such as apothecaries, physicians and those involved in the wholesale of chemicals. These boundaries were vague and ill-defined (Hunt in Anderson (eds) 2005; p78) at the beginning of the century, but became increasingly defined in the lead up to statutory regulation. The second half of the century saw the development of specialisms within the pharmacy profession and a sharpening of the

profession versus commercial trade debate that preceded the introduction of the 1868 Act.

To discuss the latter debate, it is first necessary to make the distinction between pharmacies and pharmacists. The first relates to the place in which medicines are dispensed while the latter to the person who undertakes the dispensing. This seems an obvious distinction but it is one that is essential to understanding the development of the profession, differences in regulation both between pharmacy and other professions and between the UK and Europe, and one that continues to challenge the professionalism of pharmacy.

It is also worth setting out the current structure of the pharmacy profession. The pharmacy profession can be divided into a number of sectors, based on their work setting. By far the largest of these sectors is community pharmacists. They account for over two thirds of all registered pharmacists in the UK (Seston and Hassell, 2009; p20) and over eighty per cent across the whole of the EU (Atkinson and Rombaut, 2001; p170). Community pharmacists work in retail outlets, ranging from the big chains such as Boots through to small independent pharmacies. The pharmacy profession grew out of this type of practice and it was the dominant form of pharmacy until the late nineteenth century (Anderson in Taylor and Harding, 2001; p22). The second largest sector is that of hospital pharmacy. The development of this sector starts in earnest at the beginning of the twentieth century and gained significant momentum with the birth of the National Health Service in 1948. This sector accounts for around a fifth of registered pharmacists in the UK (Seston and Hassell, 2009; p20) but only five per cent across the whole of the EU (Atkinson and Rombaut, 2011; p170). There are also pharmacists who work in the primary care sector of the NHS, in industry (largely research and development for pharmaceutical companies) and in academia.

From the 1880s onwards, changes in the wider retail sector started to effect pharmacy. Large commercial enterprises with multiple pharmacy locations, department stores and other new forms of retail began to test the trade versus profession tension. Taylor and Harding (2001; p11) identify a number of important court cases that tested the powers of the Pharmaceutical Society in relation to the

emergence of large retail chains such as Boots the Chemists as a key turning point in the profession. The impact of these changes, along with the change in how medicines were manufactured (that is, a move from bespoke manufacturing by the dispensing pharmacist to mass production), have created ongoing and still current challenges to the profession.

Indeed, since the 1950s, three major reports have focused on the future of community pharmacy and a number of people both within and without pharmacy have talked about the deprofessionalisation of community pharmacists. In 1955, the Royal Pharmaceutical Society established a committee of inquiry because of its concerns about community pharmacy. This published a report in 1963 in the *Pharmaceutical Journal* at a time when independent pharmacies were under threat and the multiple chain pharmacies were increasing their market share (Sonnedecker, 1986; p110). The report highlighted the dangers of commercialism and non-professional business dominating the profession; a fact that was amply demonstrated when a director of the Boots company took and won legal action against the Society when it attempted to implement the report's recommendations.

Chijioke Agomo argues that these commercial interests are 'obviously not in line with the expected altruistic service' expected of professions and, as such, pharmacists might not be considered as 'true professionals' (2011; p321). But the trade versus profession tension within the (specifically community) pharmacy is not unique to the pharmacist profession. Such tensions also exist for some of the other professions examined in this research: architects, hearing aid dispensers and psychotherapists all, to some extent, are influenced by commercial interests. Hearing aid dispensers in particular are paid for the products they sell, rather than the advice they provide, in much the same way as community pharmacists.

Of course, the changing retail landscape was an important, but not sole, factor affecting community pharmacy. The introduction of the NHS in 1948 not only greatly affected the hospital pharmacist sector but had a profound, negative impact on the community pharmacist. Almost overnight, the role of the community pharmacist radically changed. The number of doctor-issued prescriptions quadrupled between 1947 and 1949, and dispensing prescriptions changed from being under ten per cent

of the income of pharmacies in 1948 to over seventy per cent by 1972 (Anderson and Berridge, 2000). At the same time, the sale of drugs manufactured by the pharmacist in the pharmacy declined significantly, from twenty per cent of pharmacists' income in 1900 to under one per cent by 1972. And, 'almost overnight, many pharmacists effectively migrated from the front of the shop to the back' (Taylor and Harding, 2001; p18) and their role changed from advising customers and manufacturing bespoke medicines to dispensing prescriptions issued by doctors. Sonnedecker is not alone in identifying the role that the NHS played in these changes (1986; p130), although is perhaps a little too eager to blame socialised healthcare.

By the 1980s, the prospects for community pharmacists had decreased even further. In 1986, the Nuffield Committee of Inquiry into Pharmacy was established, which made 96 recommendations, 26 of which related to community pharmacy. The report marks the beginning of attempts to redefine the role of the community pharmacist and increase their role in advising customers, followed by *Pharmacy in a New Age* (1995), *Building the Future* (1997) (both published by the Royal Pharmaceutical Society), *A Vision for Pharmacy in the New NHS* (Department of Health, 2003) and the recently launched *Pharmacy Call to Action* (NHS England, 2013). This recognises the key role that community pharmacy plays in the frontline delivery of healthcare and states that:

*"Our aim is to enable community pharmacy to play an even stronger role at the heart of more integrated out-of-hospital services that support better health outcomes for patients, provide more personalised care, deliver excellent patient experience, optimise the use of medicines and secure **the most efficient possible use of NHS resources**."* (NHS England, 2013)(my emphasis)

For the Nuffield committee, such a refocus was necessary to ensure the continued professionalism of community pharmacists. However, money is increasingly important, and it is clear from the work of the Department of Health and NHS England that a key driver of these attempts to 'return to the traditional roots of the community pharmacist' (Taylor and Harding, 2001; p22) is to ensure that

pharmacists, not GPs or Accident and Emergency departments, deal with minor health issues.

Perhaps the most significant changes in the regulation of pharmacists were introduced as part of a wider programme of changes in regulatory regimes under the Labour Government of 1997-2010 (discussed in section 2.7). This involved the professional body and regulation roles of the Royal Pharmaceutical Society being split and a new, what I have termed in section 2.5 as *statutory: independent* regulator, the General Pharmaceutical Council, established. This change in regulatory regime was first proposed in the White Paper, *Trust, Assurance and Safety – The Regulation of Health Professions in the 21st Century*, published in 2007 (HMG, 2007). The government stated that::

“The RPSGB’s responsibilities towards pharmacists for professional leadership are potentially in conflict with its role as an independent regulator for the profession itself.” (HMG, 2007; p31)

The White Paper set out proposals to establish a working group to take forward its proposals to establish an independent regulatory for pharmacy and to amend the Royal Charter of the RPSGB. These proposals were eventually included in the Health and Social Care Act of 2008 and the new regulatory was established in 2010.

4.5 Psychotherapists

Core to most of the definitions of professions outlined in section 2.2 are the concepts of shared values, norms, competences, skills, knowledge, experience and interests. Savage (1994; p131) talks of professions as ‘networks of strategic alliances’ of individuals who ‘share a core competence’ and Lord Benson’s defining characteristics of a profession is that there is a single governing body that sets standards of education, training, ethics and conduct for members of the profession.

In many ways, psychotherapists cannot be considered as a group of individuals who share common values, norms, competences and outlooks, and there is certainly not

a single governing body for the whole of psychotherapy. Indeed, there are over fifty organisations that might be considered professional bodies and at least three overarching bodies that provide registration, education and training roles. Whereas each of the other groups investigated in this research are subject to some form of statutory regulation, psychotherapists are not. Several practitioners argue that psychotherapy is not a profession (for example, Richard Mowbray in his 1995 treatise, *The Case against Psychotherapy Registration*).

There have been a number of histories written about psychotherapy in general and specific psychotherapy disciplines. A few histories seem to suggest that the antecedents of psychotherapy go back to the very beginning as the emergence of homo sapiens on the planet (Hamlyn in Lister-Ford, 2007; p3), although most trace the development of psychotherapy to the 1920s (Muran, Castonguay, & Strauss, 2010; p3) and to the work of early pioneers such as Freud, Jung, Jones and Alexander and as a response to the huge impact of shell shock during the First World War (Jones, 2010). Much early psychotherapy as 'talking therapies' was undertaken by psychiatrists. Freud sought to locate his theories in medical models of illness and treatment (Hamlyn in Lister-Ford, 2007; p7) and many psychiatrists actively resisted any dilution of Freud's work (Neve, 2004; p409). Indeed, the relationship between psychotherapy and the medical profession is one that still has reverberations today.

From these early beginnings, psychotherapy has developed through a number of 'schisms' (Hamlyn in Lister-Ford, 2007; p11), through tensions and disagreement about the nature of human reality, the objective of talking therapies, between British and American professional groups on one hand and European on the other (Muran, Castonguay, & Strauss, 2010; p1), on what training is required and even on whether therapy is (Saunders in Feltham (eds) 1999) or is not (Epstein in Feltham (eds) 1999) effective. In the 1950s and 1960s, there was a huge growth in psychotherapy research, academic literature and a reorganising of the profession. Even a cursory glance of psychotherapy practice today would reveal a huge array of disciplines, outlooks, approaches, values and norms. It is not essential that this landscape be described here (indeed, such is the range and complexity that there simply is not enough space), but it is important that this complexity, difference and disagreement

be noted, as it has and continues to have significant implications in terms of discussing the regulation of psychotherapy.

The first call for statutory regulation of psychotherapists was made by Sir John Foster in 1971. In 1969, the government had established an official enquiry into Scientology in the UK and had appointed Sir John to chair the enquiry, following much heated debate in Parliament and in the media about the role of L Ron Hubbard's organisation and its recruiting methods. It followed a string of international enquiries, starting with the Anderson Inquiry in Victoria State, Australia in 1961 that eventually led to the passage of the Psychological Practices Act, 1965 in that state. This provided for the registration of all psychologists with a newly created Psychological Council, and introduced protections of title and function (Foster, 1971; p5). The Anderson proposals, echoed in the Foster Report here in the UK, assumed the Scientology was a form of psychotherapy. One of Foster's key recommendations was that:

"....psychotherapy (in the general sense of the treatment, for fee or reward, of illnesses, complaints or problems by psychological means) should be organised as a restricted profession open only to those who undergo an appropriate training and are willing to adhere to a proper code of ethics, and that the necessary legislation should be drafted and presented to Parliament as soon as possible. " (Foster, 1971; p1)

However, between the appointment of the inquiry and the publication of its report, there had been a change in government in the UK and a change of responsible minister from Richard Crossland to Sir Keith Joseph. There also appears to have been a cooling of interest, both in Parliament and the media, around the activities of Scientology in the UK. For whatever reason, no immediate proposals were brought forward to introduce statutory regulation of psychotherapists. In the late 1970s, following a further change in government, a professions joint working party was established and chaired by Paul Sieghart. This reported in 1978 and again recommended statutory regulation. However, as with Foster, the Sieghart Report did not lead to the publication of any proposals or draft legislation by the government, leading Fred Balfour and Joscelyn Richards to conclude that 'for many reasons no British government has wanted to introduce statutory legislation of psychotherapists'

(1995; p422). However, a number of commentators, notably Peter Jenkins (2004; p284) put the blame squarely at the door of the psychotherapy professional bodies, because of their inability to come to an agreement and present a united front (indeed, Jenkins identifies that by 1989, there were over seventy active psychotherapy organisations).

As a consequence, a number of voluntary registers were established by different professional bodies and training institutions. In 1977, the British Association of Counselling was formed. In September 2000, the Association changed its name to the British Association for Counselling and Psychotherapy (BACP). Today, BACP is the largest and broadest body within the sector. The BACP established a voluntary register in 1995; in 2014 the register was accredited by the Professional Standards Authority (what I term as *government assured* in section 2.5).

Throughout the 1980s there were increasing developments in other areas of psychotherapy that led to a series of annual meetings called the Rugby Psychotherapy Conference. In 1989, this developed into a more formalised United Kingdom Standing Conference for Psychotherapy (Wake and Young, 2009; p3). Over the next three years, further changes in name and objective were implemented and eventually the United Kingdom Council of Psychotherapy (UKCP) was established and its voluntary register opened. Like the BACP register, the UKCP register is also accredited by the Professional Standard Authority.

Alongside these voluntary developments, there were several attempts to introduce statutory regulation. In the early 1981 Graham Bright, the Conservative MP for Luton introduced a Private Members' Bill to regulate the profession. It fell at the Second Reading (Jenkins, 2004; p284). In 1999 Lord Alderdice (who had initiated the debate that led to the establishment of the Foster Inquiry) introduced a Private Members' Bill in the Lords. The Bill was modelled on the approach taken to establish the General Osteopathic Council and General Chiropractic Council, both of which had been established in the early 1990s as a result of Private Members' Bills. Lord Alderdice's Bill was defeated at its Third Reading in 2001. He explained the repeated failures to bring psychotherapy under statutory regulation by suggesting that:

“One reason for the failure has been the diversity of therapeutic approaches that fall within the bailiwick of psychotherapy. During the past couple of years, much of my endeavour has been directed towards persuading the various psychotherapy organisations and representatives to accept a relatively limited but coherent list of modalities.” (Alderdice cited in Wake and Young, 2009; p2)

The table below gives an account of this professionalisation process, drawing on the criteria set out in section 2.5 of this thesis. Unlike any of the other professions covered by this research, psychotherapists are not covered by any form of statutory regulation and unqualified persons are not excluded from lawfully practicing as psychotherapists.

Criteria	Date	Comment
Voluntary association	1920s, 1980s/90s	Complex landscape of organisations with three main professional bodies and large number of other representative bodies.
Education and training	1980s/90s	Although training programmes have been available since the 1920s, it was during the 1980s and 1990s that these programmes were standardized and accredited by professional bodies. Does not apply to all disciplines within psychotherapy.
Conduct	2000s	Some attempts to set and enforce standards in 2000s. Does not apply to all disciplines within psychotherapy.
Exclusion of unqualified persons		Legislation drafted in 2009. Fell when Parliament dissolved for 2010 General Election.
Statutory regulation		First call in 1971. Several attempts before government proposed regulation in 2007.

Table 13: Key stages of professionalisation of psychotherapists

It was not until 2007 that the UK government made its first commitment to introduce statutory regulation of the profession. As I have outlined, the 1997-2010 Labour Government introduced a number of significant reforms of professions regulation, culminating in a major White Paper *Trust, Assurance and Safety* on the future of healthcare professions regulation and a huge legislative programme resulting in the Health and Social Care Act 2008. The White Paper proposed:

*“The Government is planning to introduce statutory regulation for applied psychologists, healthcare scientists, **psychotherapists** and counsellors and other psychological therapists. These are the priorities for the introduction of statutory regulation, because their practice is well established and widespread in the delivery of services, and what they do carries significant risk to patients and the public if poorly done. Further work is needed on these areas and the Government intends to continue with it.” (HMG, 2007; p81)(my emphasis)*

The White Paper then proposed:

“The Government’s view is that most new professions should be regulated by the Health Professions Council.....Psychologists, psychotherapists and counsellors will be regulated by the Health Professions Council.” (HMG, 2007; p86)

Three important issues should be raised here. First, the healthcare professions regulatory landscape is reasonably crowded, with nine separate bodies, each established at different points and under different legislation and with differences in their scope, powers and approach to regulation. So complex is this system that the government had established the Commission for Healthcare Regulatory Excellence (the CHRE, renamed the Professional Standards Authority for Health and Social Care by the Coalition government) to oversee and coordinate between the nine regulators.

The government had previously established a review to examine the regulation of non-medical healthcare professions. This examined the regulator landscape and initially considered reducing the number from nine to three or four, by introducing multi-profession regulators along the lines of the HCPC. The final report concluded that for ‘practical reasons’ the number of regulators should not be reduced (DH, 2006; p43). However, it also committed not to establish any new regulatory bodies and that the Health Professions Council (subsequently renamed the HCPC) should be the regulator of choice for the regulation of any future professions, including psychotherapists.

Secondly, a number of psychological professions were identified for regulation in the White Paper, including psychotherapists. Statutory regulation for each of these groups was implemented within eighteen months of the publication of *Trust, Assurance and Safety*; the exception being psychotherapists. Finally, previous recommendations and proposals for the regulation of psychotherapists had involved the establishment of a profession-specific regulator, a General Psychological Council. This had been the recommendation of the Foster Review in 1971 and had been the approach taken by both Sir Graham Bright and Lord Alderdice in their Private Member's Bills.

However, this profession-specific self-regulation model was not the approach adopted by government in 2007. Rather, the government proposed that psychotherapy, along with other psychological professions, would be regulated by the multi-profession regulator, the HCPC. As this policy developed over 2005 to 2007, it initially failed to receive support from the main professional bodies involved. The BACP, for example, initially opposed the proposals and suggested an alternative model (BACP, 2006) and a report published in 2009 by a number of smaller professional bodies suggested that, at the time of the 2007 proposals, 'nearly all the counselling and psychotherapy organisations in the UK had agreed that HCPC was not suited to regulate the talking therapies, and a variety of alternative models were discussed.' (Maresfield Report, 2009; p6).

There then began a campaign against the government proposals, culminating in a legal challenge by six psychotherapy organisations in late 2010 and the subsequent decision by the new Coalition government to abandon the proposals. During this period, the BACP and the UKCP both began to work with the HCPC, to participate in the process of establishing the statutory register and thereby work towards implementing the government's proposals.

The first facet of this campaign was the nature of opposition. Some were opposed to the regulation in any form while others were opposed to regulation by the HCPC. In particular, those disciplines within the humanistic and analytic branches of psychotherapy argued strongly against any form of regulation. Building on an earlier campaign against calls for statutory regulation in the 1990s, those who argued

against any form of regulation drew heavily on the arguments made by Richard Mowbray, a practitioner of primal integration therapy and leading human potential psychotherapist.

In his 1993 book *The Case Against Psychotherapy Registration*, Mowbray attacks the idea that psychotherapy is a profession and makes an impassioned plea against voluntary and statutory registration and regulation. That Mowbray starts his case with an erstwhile defence of scientology was forgotten by those who used his arguments against the 2007 government proposals. It was his arguments against professionalisation, the treatment of psychotherapy as a profession and the imposition of a 'medical model' that were the focus of opponents to any form of regulation.

And Mowbray is not the only practitioner engaged in this anti-regulation rhetoric. Each attempt to regulate psychotherapists, whether by statute or by voluntary arrangement, has resulted in a plethora of books, articles and reports written by those who oppose the proposals. Postle and House (2009), in their own treatise against regulation *Compliance? Ambivalence? Rejection? Nine papers challenging the Health Professions Council 2009 proposals for the state regulation of the psychological therapies*, provide an overview of this anti-regulation literature, which includes such titles as *Regulating the Psychological Therapies: From Taxonomy to Taxidermy*, Hogan's 1979 classic *The Regulation of Psychotherapists*, House and Totton (eds)(1997) *Implausible Professions: Arguments for Pluralism and Autonomy in Psychotherapy and Counselling*, Bates and House R. (eds)(2004) *Ethically Challenged Professions* and Parker and Revelli (eds)(2008) *Psychoanalytic Practice and State Regulation*.

Just as in the case of previous attempts to introduce regulation, the government proposals of 2008 garnered books, reports, articles, letters to journals and newspapers, TV and radio call appearances, the setting up of a new anti-regulation organisation and a legal challenge. Perhaps the most extraordinary of these is a book by Janet Haney, published in 2012 book *Regulation in Action*. Haney basically reproduces (albeit an edited and annotated version) a publicly available HCPC fitness to practise case, for which she provides a brief introduction and conclusion.

The introduction invites the reader to draw their own conclusions about the nature of professions regulation, its implementation by the HCPC and its inappropriateness for the psychological professions. She then provides a narrative, spelling out the conclusions she had previously invited the reader to make themselves. Throughout, she makes clear her position that regulation is not appropriate for the psychological therapies and that regulation by the HCPC in particular is not appropriate. As with many of the previously mentioned commentators, Haney seems to misunderstand key elements of regulatory regimes and, in particular, makes an assumption that the HCPC regulates using a 'medical model' approach.

It was worth discussing the issue around the 'medical model'²⁵ in more depth, as this was core to both arguments against any form of regulation and against the specific proposals for regulation by the HCPC. At the beginning of this section I highlighted that the early development of psychotherapy developed from psychiatry and utilised a 'medical model' in its understanding of illness and treatment. As psychotherapy developed, there have been disagreements between disciplines about the objective, purpose, epistemology and approach of psychotherapy, and many non-medical psychotherapists have many issues with the medical model. Indeed, it is not only non-medics who reject this approach to psychotherapy – indeed, Freud himself reported rejected a medical psychological approach.

The 'medical model' often has negative connotations and has been challenged in a number of fields. For example, there has long been a movement to reject a medical understanding of disability and rather to see disability as socially constructed (Rothman, 2010). It is particularly an issue for some disciplines within psychotherapy. Mowbray, for example, states that definitions of psychotherapy are complex because:

“Those who don’t know anything about it (and that usually includes government and officialdom generally) will assume, sensibly enough on the basis of associations to similar terms that it refers to a medical model activity of treatment for psychological

²⁵ The 'medical model' is a term originally coined by the psychiatrist RD Laing. It is a set of basic assumptions about human illness. In relation to psychological therapies, such an approach would start with an assumption that abnormal psychology is the result of some physical disorder.

or emotional problems - the 'talking cure', and that its recipients are patients and are 'unwell' and mentally or emotionally 'disturbed'." (Mowbray, 1995; p187-188)

David Jones, in discussing the Alderdice Bill, warns against a 'risk of domination by conformity' which he associates with the medical model (Jones, 2000; p38) and Sanders (2008, as cited in Murphy, 2011; p238) calls this process the 'medicalisation of psychological distress', arguing that it favours those who want to maintain the dominant medical model. It is a fear echoed in two books written about the proposed regulation of psychotherapy by the HCPC – both the book by Janet Haney and the Postle and House collection of nine missives against regulation. Many of these accusations that the HCPC utilises the medical model in its approach to regulation are seemingly because the regulator's name contained the word 'health'. Several commentators further accused the HCPC of trying to implement an NHS model of quality and management. In doing so, they largely ignored the large numbers of HCPC registrants who do not work in the NHS or do not utilise a medical approach to their professional work.

Shortly following the 2010 General Election, a group of six psychotherapy organisations began legal action to challenge the process by which the HCPC had developed its arrangements to implement the government's proposals to regulate the psychotherapy profession. Leave was given for the hearing of this judicial review in December 2010. However, the case was never heard: in February 2011, the new Coalition Government published its White Paper *Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers*. As I set out in section 2.8, this White Paper signalled (at least in terms of policy rhetoric) a shift in government policy from a presumption for statutory regulation of professions to a presumption for regulation only as a last resort. While no specific mention was made of psychotherapists in the White Paper, on 18th March 2011 Anne Milton MP, the responsible Minister, wrote to the HCPC and stated the government was not going to proceed with plans to introduce statutory regulation for psychotherapists. At a meeting of the HCPC on the 31st March 2011, all work towards implementing the required standards and systems for regulating this profession was halted.

Since the new government signalled the end to proposals to regulate psychotherapists, a number of the existing professional bodies have applied for, and been approved for, accreditation of their registers by the Professions Standards Authority for Health and Social Care (PSA). The accreditation process itself was proposed in the *Enabling Excellence* White Paper, and the PSA given statutory powers to accredit registers under s229 of the Health and Social Care Act 2012. By March 2015, a number of psychotherapy registers have been accredited by the PSA, including the UKCP, BACP, Association of Child Psychotherapists, Counselling and Psychotherapy in Scotland, the National Counselling Society and the British Psychoanalytic Council.

The last of these registers – that managed by the British Psychoanalytic Council - is interesting, as a number of its members had been completely opposed to any form of regulation. It seems that these individuals have failed to notice the similarity between the standards required of accredited registers by the PSA and the standards that would have been required of registrants by the HCPC.

It should also not be assumed that the entire psychotherapy profession was opposed to the government's proposals to regulate psychotherapists. Murphy (2011; p227) suggests that the arguments in favour of 'professionalisation, statutory regulation and standardisation' were seen as logical and straightforward by a number of organisations involved. Several of the large psychotherapy professional bodies actively worked with the HCPC to develop and implement the necessary standards to underpin the regulation of the profession. They were accused of going along with the proposals in order to not 'rock the boat' (Maresfield Report, 2009; p6) or in order to further their own interests (Gladstone, 2008 as cited in Murphy, 2011; p230).

And even within this supportive group, divisions persisted, particularly between the BACP and the UKCP. This rivalry had existed for some time: writing in 2009, Lisa Wake, then Chair of the UKCP, states that a 'second split' between the two organisations in the mid-1990s (and thereby suggesting that the differences existed before this date) and Tom Warnecke, in an article in the UKCP's journal from 2011 comments on the 'long history of conflicts and often bitter rivalries in our profession, and between many of our professional organisations' (Warnecke, 2011; p4). As

Jones (2000; p37) and Wake and Young (2009; p2) point out, there needed to be a single, united voice representing the profession if statutory regulation were to be introduced. In both cases, these authors were explaining that a united profession was needed *before* the government could be convinced to propose statutory regulation. But here, the level of disunity and disagreement within psychotherapy convinced the government to abandon its plans and thereby prevented the profession from being regulated.

4.6 Teachers

The teaching profession is possibly the oldest examined in this research, and it would be possible to trace its development to Ancient Greece. However, until relevantly recently, teachers were associated with the church (Aldrich, 2012; p xvi), they were men, graduates of Oxford or Cambridge and generally members of the clergy, and they taught in public or independent schools (Wardle, 1977; p99). It is not until the introduction of large-scale public education that the modern concept of the teaching profession can be traced (Bines and Welton, 1995; p174). This teaching profession was increasingly secular, non-graduate and (particularly in primary/elementary schools) women and from the working classes. It is predominately employed in state maintained schools. It is this group - teachers working in the state compulsory education system in England – that is the focus of this research. Table 14 overleaf sets out the professionalisation process for teachers.

Teachers have also been at the centre of significant regulatory policy change over the past ten years. In June 2010, the Government announced its intention to dissolve the GTCE. This body was the registration and regulation body for most teachers in England and was established by the Teaching and Higher Education Act 1998. The body was up and running from September 2000 and replaced a register and disciplinary system that had been directly managed by the Department for Education²⁶.

²⁶ During the lifetime of the GTCE, its sponsoring department changed its name on four occasions. For ease, I refer to the sponsoring department throughout by its current name, the Department for Education.

Criteria	Date	Comment
Voluntary association	1841	College of Preceptors established. Teaching unions established in late nineteenth century. Became College of Teachers in 1998 and is working towards establishing a Royal College of Teaching.
Education and training	1850s, 1890s, 1980s	The College of Preceptors introduced professional exam requirement for membership in the 1850s. From the 1890s, training moved from a school-based apprenticeship model to a university-based education model. B.Ed degrees introduced in 1960s and graduate only profession in 1972. Post graduate training courses introduced in 1980s.
Conduct	2002, 2012	Various attempts to introduce professional standards before GTCE introduced statutory requirements in 2002. Replaced by government regulations in 2012.
Exclusion of unqualified persons	1944, 1980s, 2002	From 1944, certificate required for teaching in state maintained schools. In 2002, only persons registered with GTCE allowed to teach in state maintained schools. Requirements does not apply to free schools or academies.
Statutory regulation	2002 (abolished 2012)	GTCE established in 2000 and register by 2002. GTCE abolished by Education Act 2011.

Table 14: Key stages in the professionalisation of teachers

In the summer of 2012, it closed its doors and the Department for Education reestablished its registration and disciplinary systems. Teachers are separately regulated in each of the four home countries of the United Kingdom; there are teaching councils in Scotland, Wales and Northern Ireland and only England has a system of direct government control.

There has been some published research seeking to examine the extent of rent-seeking by teachers in the States through teacher licensing (for example, Alexander, 2004). Teaching in the UK is not represented by a single professional body: teachers are highly unionised and there are a large number of unions representing their

professional interests. This, coupled with the recent changes in regulation, make teachers an interesting comparator profession to include in this research.

The campaign to establish a self-regulatory council for teachers can be dated to the 1840s, gathering ground when a group of teachers sought to establish a body similar to the General Medical Council (Willis, 2005). This campaign followed the appointment of a Committee of the Privy Council to oversee education in 1839 (Horn, 1979; p29). Aldrich, Dean and Gordon suggest that is a major 19th century legacy which still impacts on education today, as it established the relationship between central government and teachers (1990; p3). It was a highly controversial move, and one that was opposed by a number of different interests. Although the Conservatives in Parliament had initially been opposed to the move, they did not abolish the committee or its work when Sir Robert Peel became Prime Minister in 1841. The committee lasted until 1899, when a Board of Education was established. Although the committee rarely met and generally devolved its work to local agencies, it set the basic political and administrative framework for the English education system (Aldrich, Dean and Gordon, 1990; p13).

Shortly after the debate surrounding the Committee of the Privy Council, the College of Preceptors was founded. The college gained its Royal Charter in 1849, creating much hostility from entrenched interests (those who supported the traditional route into teaching as being Oxford/Cambridge and the church and were opposed to the secular, non-graduate profession being promoted by the college) (Aldrich, 2012; p102). At numerous points over the subsequent 150 years, a number of Parliamentary committees, groups and teacher interest groups lobbied for and recommended the introduction of a General Teaching Council (Kirk, 2000). In the 1960s, Scotland introduced its own teaching council. Two years after the Scotland arrangements were implemented, the Labour Government announced plans to establish a General Teaching Council of England and Wales and established a working party to consider this (Bines and Welton, 1995; p176)(Willis, 2000; p26). It is worth noting that Edward Short, the Minister who proposed this policy, was sponsored by the National Union of Teachers and wanted to 'subdue inter-union rivalry' (Willis, 2005; p125). This resulted in the Weaver Report of 1970, which proposed a split of functions between two separate organisations and which

failed to gain the support of the teaching unions or the newly elected Conservative Government. I would suggest that inter-union rivalry identified by Richard Willis in his 2005 book *The Struggle for the General Teaching Council* is a consistent theme in education policy from the 1880s onwards.

In the 1990s, both the Labour and Liberal Democrat parties had manifesto commitments to the introduction of a General Teaching Council, a move also supported by the Backbench Conservative-led Education, Science and the Arts Select Committee (Willis, 2005). During the debates on the 1994 Education Bill, amendments were moved by Peers to establish a Council and in 1996, Sir Malcolm Thornton moved a Private Members' Bill to establish a Council, which fell at the 1997 General Election (HoC, 1998) and Thornton lost his Crosby seat.

The General Election of 1997 was shortly followed by the publication of a Green Paper on teaching and a Bill aimed at establishing a GTCE. In introducing the Bill at its Second Reading, David Blunkett, then Secretary of State for Education, commented that:

"I wish to refer to the remaining clauses of the Bill. Clauses 1 to 13 seek to introduce a general teaching council, which will lift the esteem, professional standing, morale and motivation of the teaching profession." (Hansard, HC Deb 16 March 1998 vol 308 cc961-1049)

During the debate, several Members of Parliament noted the longstanding ambition to introduce a General Teaching Council and welcomed the proposals in the Bill as a step in the right direction. However, others noted that the proposals were somewhat limited. As originally proposed, the Council would have limited powers and responsibilities, as pointed out by the shadow Secretary of State for Education during the Second Reading of the Bill:

"The idea is to promote teachers' professional status, but the Government's original proposal combines the worst of all possible worlds. It will make membership of the council compulsory and it will require all teachers to pay a contribution, but the only function of the council that is specified in the Bill is to give advice to the Secretary of

State. I do not see how that interpretation of the idea of a general teaching council will deliver the objective of promoting the professional status of teachers. The Government's proposal is entirely friendless.” (Hansard, HC Deb 16 March 1998 vol 308 cc961-1049)

During the passage of the Bill, amendments were moved by a number of Peers to widen the scope and powers of the proposed GTCE. Originally, the Labour Government opposed these amendments, and seemed intent on creating a ‘talking shop’ rather than a professions regulator. Why? Clues may lie in the role of the teaching unions in Labour Party policy and their views about teacher registration and regulation.

A number of commentators repeatedly raise the rivalries between the various teachers unions, and between the unions and government, as a key issue in education policy generally and specifically with regards to teacher regulation. Willis suggests that in the first years of the Conservative governments under Margaret Thatcher, proposals to establish a General Teaching Council floundered because of the hostility of the unions (p127), who were concerned about the roles and responsibilities of the Council and possible competition. Certainly, John Sayer seems to imply this in his discussions of these policy proposals, stating that in discussions in 1979 the National Union of Teachers finally dropped its insistence that it had a majority on any council and agreed to direct elections, a move which was then opposed by another of the unions (Sayer, 2000; p24). It seems entirely plausible that the unions ensured the Labour Government’s proposals were limited in nature. Over the course of the Bill’s passage through Parliament, the government changed its mind and came to accept the amendments which both strengthened the role of the GTCE and reducing the powers of the Secretary of State.

These difficulties persisted as the GTCE was established. In late 1998/early 1999, the government began consulting on the composition of the council. These resulting in several proposed amendments and further consultation and further debate and discussion in Parliament. What resulted was a large unwieldy council, with a complex set of compromise arrangements that did not satisfy any of the teaching unions. Eventually, elections were held in early 2000 and the first council meeting

held in the autumn of that year. Beginning operations in 2000, the Council had three primary aims: for maintaining a register of teachers, secondly for advising Government on policy issues related to teachers and thirdly for establishing standards for the teaching profession (Page, 2012).

From the outset, the GTCE was outwith wider developments in regulatory practice in the UK. In terms of its coverage, the body only covered England, reflecting the implications of devolution and the existing General Teaching Council for Scotland; however, almost all other professions are regulated at the UK-level. Secondly, in terms of size and composition of the Council, the GTCE was a large body that was dominated by the teaching profession. The GTCE had some sixty-four Council members, a majority of whom were teachers either elected or nominated by the nine main teaching unions. This is at odds with wider developments in professions regulation. For example, the government's White Paper *Trust, Assurance and Safety* (HM Government, 2007) led to the reduction in size of healthcare professions regulatory boards and a move to lay majorities, and a move to appointment of registrant board members instead of election from within the relevant profession. These types of changes had already been made to other professions regulators, such as the ARB. Despite these wider changes, the GTCE was set up as large, teacher dominated board and no proposed changes to its composition were published by the 1997-2010 Labour Government.

Thirdly, the GTCE set itself out to promote the interests of teaching as a profession (GTCE, 2000). Here, too, changes in wider regulation policy seem to have missed the GTCE. Elsewhere, the promotion and regulation functions of a number of professions regulators were being split; in 2006 the Law Society had its regulatory functions removed and a Solicitors Regulation Authority was created. Similarly, the Bar Council was split and its regulatory functions passed to a new, independent Bar Standards Board. *Trust, Assurance and Safety* led to the split of functions of the Royal Pharmaceutical Society and the establishment in 2010 of the General Pharmaceutical Council as a registration and regulation body. Indeed, over its lifetime, the GTCE was not subject to any Government-led changes in its structure, composition or regulatory functions. As such, it provides an interesting comparison to

the other case studies set out in this paper, all of which did experience such changes.

Indeed, that the GTCE did not understand how the wider regulatory landscape had changed is amply demonstrated in a memorandum submitted when Parliament was considered the proposals for its abolition contained in the 2010 Education Bill. The GTCE commented:

“Teaching in England, in common with medicine, law and teaching in other countries, is a skilled and trusted profession which hitherto has been subject to professionally-led regulation..... The proposals in the Bill remove from the profession the responsibility to set, and be accountable for, its professional standards and ethics.”
(GTCE, 2010)

And this view of the GTCE as a statutory professional body rather than an independent regulator, was not just confined to the GTCE itself. Saunders, a visiting professor at the Institute of Education and a Fellow of the College of Teachers, suggests that professionalism is articulated by and through a statutory professional body, and commented:

“Typically, a ‘profession’ is recognised and respected as such because it is represented by a professional body – like the General Medical Council or the Law Society – which has certain statutory powers and duties.” (Saunders, undated)

Throughout the period of its existence, debates raged about the role, composition and effectiveness of the GTCE. A survey of teachers conducted in 2001 suggested that half believed that the GTCE would deliver nothing for teachers and a subsequent survey conducted by the GTCE itself caused much friction between the teaching unions, the unions and the government and the unions, the government and the GTCE (Willis, 2005; p131). In a *Times Education Supplement* editorial in July 2011, Gerald Kelly stated:

“To be sure, the GTC did not cover itself in glory. It was infamous for long-winded hearings, dodgy judgments and bureaucratic infill. Its pitifully short tally of disbarred

teachers invited derision. To be fair, the council played a bad hand but was dealt an awful one. Its remit was never clear: was it supposed to advocate or regulate, to police or champion? And it was extremely unfortunate in its "friends". The teaching unions, sniffing a possible rival, succeeded in nobbling it at birth. But this sad tale should have led to reform not abolition." (Kelly, 2011)

Kelly's editorial followed the announcement in June 2010 by the new Coalition Government that it intended to abolish the GTCE. In making the announcement, Michael Gove, then Secretary of State for Education, stated:

"Since I have been shadowing education and more recently held the brief in Government there has been one organisation of whose purpose and benefit to teachers I am deeply skeptical - the GTCE. I believe this organisation does little to raise teaching standards or professionalism. Instead it simply acts as a further layer of bureaucracy while taking money away from teachers." (Gove, cited in DFE, 2010)

The proposals failed to muster any real opposition or anti-termination coalition. Many of the teaching unions welcomed the proposals and, with the exception of some amendments moved by the former Chair of the GTCE, Lord Puttnam and comments by the GTCE itself, there was very little outright opposition in the Parliamentary debates. The GTCE eventually closed its doors on 31st March 2012. The register of qualified teachers was abolished and replaced with a register of those individuals barred from teaching in maintained schools. This, and the disciplinary process that could lead to a teacher being barred, are now the responsibility of an executive agency within the Department for Education. In the vacuum left by the GTCE's abolition, the College of Teachers (the successor body to the first professional association, the College of Preceptors) began a dialogue on the creation of a Royal College of Teaching. Discussions have progressed to the extent that in December 2014, the government published proposals on establishing a College of Teachers and providing start-up funding for this venture. The consultation document states:

"There has been considerable recent interest in a new professional body for teaching. A number of pieces of work have been undertaken – independently of Government – to explore the appetite for, and possible functions of, such a body. We

welcome this work, and recognise that a prestigious, profession-led organisation that takes responsibility for standards and improvements in teaching could be an integral part of an increasingly independent and self-improving profession.....Critical to the success of a new College of Teaching would be its independence from Government – a College should provide effective support for the teaching profession as a whole. As such, it must be free of political influence; indeed it should have the confidence and authority to speak independently of Government, and with real credibility. “

(DFE, 2014; p7)

The government's consultation closed at the end of February 2015 and the results of the consultation are unlikely to be published ahead of the May 2015 General Election.

4.7 Conclusions

These five narratives trace how the professions have developed, how they are currently regulated and the key events in the history of their regulation. The narratives are not intended to be decisive histories of the five professions, but rather provide a concise introduction to each profession and to highlight some of the key issues they face in their regulation. The five narratives illustrate many of the key issues identified in chapter 2 of this thesis. They illustrate the complex landscape of professions regulation public policy, differences in regulatory regimes both between professions and overtime. The case studies highlight the differential impact of the EU on professions regulation in the UK. They also make clear that there is a complex landscape of interests involved in the policy process.

The case study narratives outlined here do not include any discussion of the three models being examined in this research. However, I draw on these narratives in my analysis of the three models in each of the subsequent chapters of this thesis. The case studies provide a useful context for this analysis and my comparison of public and private interest explanations of the policy process for professions regulation.

5 Regulators

5.1 Introduction

What motivates civil servants working in professions regulatory agencies? Are they motivated by serving the public interest, or their own private self-interests? In this chapter, I examine the different explanations provided by Patrick Dunleavy's (1991) bureau-shaping theory and by Perry and Wise's (1990) public service motivation theory.

These two theories provide different explanations of the motivations of civil servants, including those who work for professions regulators. Dunleavy's bureau-shaping theory suggests that civil servants are self-interested; public service motivation theory that they are motivated by serving the wider public interest. But as I outline in section 2.10, both models share a view that civil servants are attracted to policy making and this affects their actions and how they engaged with the professions regulation policy process. For PSM, attraction to policy making is one of the four domains used to test public service motivation. Attraction to policy making is the **means** by which public servants and professionals achieve their **goal** of serving the public interest. It is achieved through individual action. In contrast, in the bureau-shaping model, attraction to policy making is itself the goal – the means of achieving this goal (when it cannot be achieved through individual action) is bureau-shaping behaviour.

Although both models share attraction to policy making as an important variable, there are two significant differences they signal whether this attraction is an end (self-interested outcome) or means (public-interested intrinsic motivation) for civil servants working for professions regulators. Bureau-shaping is a collective action. I would therefore expect bureau-shaping to be endogenous change, resulting from the collective action of civil servants within the agencies being shaped. In contrast, public service motivation is individual action, and I would therefore expect any changes in the size and shape of the agencies budgets to be the result of exogenous factors. I explain these expectations in greater detail later in this chapter.

The second important difference is in relation to the size and shape of the relevant agencies' budgets. The Dunleavy model provides predictions about expected changes to the size and shape of agency budgets, against which it is possible to assess whether these changes are the result of collective action by civil servants motivated by self-interest. The difficulty is, most of the existing research around bureau-shaping describes changes in the size and shape of government budgets at the aggregate level and, if those changes are in line with the predictions of the model, assume this is because of the self-interested behaviour of civil servants. There are few attempts to consider alternative explanations (with the notable exception of Oliver James' 2003 comparison of public and private interest explanations of the Next Steps executive agencies) and almost no attempt at causal explanation.

In contrast, public service motivation theory makes no explicit predictions about the size and shape of agency budgets. This lack of explicit prediction is consistent with the core assumption of PSM that furthering the public interest is individual, rather than collective, action by civil servants. Of course, there is an implied assumption that more public spending must be better and must further the public interest. But any increase in the size, or changes to the shape, of professions regulators' budgets will be the result of exogenous drivers, such as overall changes in the government spending or the public interested policies of politicians serving the people.

Given this context, and the overall research question, this chapter aims to address the following research questions:

1. Do budget data change as predicted by the bureau shaping theory?
2. What factors might explain these budget changes?
3. Are these explanations consistent with expectations arising from the bureau-shaping or public service motivation models of bureaucratic behaviour?

To answer these questions, this chapter is organised as follows. Having set out the broad outline of bureau-shaping and public service motivation theories in chapter two, here I set out a more detailed explanation, and particularly set out the causal

mechanisms by which civil servants working in professions regulators would further their self-interests and what outcomes should be expected from this process.

Secondly, I then provide a similar account with respect to public interest explanation implicit in public service motivation thesis. Here, my causal mechanism is hypothesized to be civil servants reacting to some need for budget changes to further protect the public, using increases in complaints about registrants as the public interest justification or a more general increase in overall government spending.

Thirdly, I set out the method by which these analyses were undertaken. I then present the analysis with respect to bureau-shaping. There are two parts to the analysis; a comparison of budget changes for each relevant regulator to the outcome predicted by Dunleavy's model and content analysis to provide a narrative to explore whether these budget changes can be explained by the model. The regulators covered by this analysis are the Architects Registration Board (which regulates architects), the General Teaching Council for England (with respect to teachers), the Hearing Aid Council and the Health and Care Professions Council (both with respect to hearing aid dispensers, and the latter as the proposed regulator for psychotherapists). I then set out similar analysis with respect to the public service motivation model. These analyses are presented both for individual regulators and aggregated across all of the regulators included in this analysis. This chapter presents research that focuses on four regulatory agencies in the UK that have been responsible for regulating the case study professions set out in chapter four.

5.2 Government spending, 1995 to 2015

The level of overall government spending provides a useful means of comparing public and private interest theories and exploring which provides a more convincing explanation of the motivations of actors engaged in the professions regulation policy process. As I have identified above and develop much further in sections 5.2.3 and 5.3.3 below, I would expect to see different forms of change between overall budgets

of regulatory agencies and overall government spending, depending on whether public interest or private interest theories have greater explanatory power.

If the bureau-shaping theory has greater explanatory power, I would expect budget changes in regulatory agencies to be greater than those observed for the whole of government spending. This is because bureau-shaping is change that is endogenous to the agency being examined and because, for Dunleavy, regulatory agencies are closer to Niskanen's budget maximising behaviour relative to other agency types.

In contrast, if the public service motivation thesis is a more convincing explanation of the motivations of civil servants, I would expect budget changes in regulatory agencies to be similar to observed changes in the overall government spending. This is because civil servants acting to further the public interest do so on an individual basis and passively accept wider changes in policy, the structure of government, and overall spend. Change is therefore exogenous and is driven by wider changes in government priorities. Of course, changes in the size of agency budgets are just one of the types of change expected by each model. There may also be changes to the shape of those budgets. As such, changes in budgets that are consistent with either of the expectations outlined above would also need to be considered along expectations about the changing shape of budgets (which is discussed in more detail in sections 5.2 and 5.3 below).

Table 15 overleaf sets out the changes in central government spending, by main area, in five year increments between 1995 and 2015. These data are from HM Treasury Public Expenditure Spending Analysis (PESA), which are yearly published data on government spending. It brings together recent outturn data, estimates for the latest year, and spending plans for the rest of the current spending review period. Data for 2015 are planned rather than actual spend.

	1995	2000	2005	2010	2015
Pensions	41.4	65.7	86.4	116.4	149.7
Health care	40	49.2	82.6	116.8	129.9
Education	11.6	14.9	23	33.4	41.7
Defence	25.6	27.8	33.4	42.5	45.5
Welfare	40.9	35.6	42.4	60.9	54.8
Protection	6.1	7.3	14	16.9	14.7
Transport	7.3	4.7	8.6	13.3	11.3
Govt depts	5	6.6	9.4	10.5	8.9
Other	38.8	42.6	59.8	88.2	106.3
Total	216.7	254.4	359.6	498.9	562.8

Table 15: UK government spending (central), 1995 to 2015 (data source: HMT PESA, 2014)

The table presents central government and excludes local government spending. This is significant particularly in relation to education, which covers the case study profession of teachers and where more than half of funding comes from local authority sources. However, as the relevant regulator considered in this analysis (GTCE) is a national body and because pay bargaining is also done nationally (which is significant for the rent seeking versus PSM analysis presented in chapter 6), I have here only presented central government data.

Between 1995 and 2015, central government spending increased by almost 160 per cent. However, this rate of increased varies considerable between the budget areas, with pensions (262 per cent increase), education (259 per cent increase) and health (225 per cent increase) being the three areas that experienced the highest level of increase and welfare (34 per cent increase), transport (55 per cent increase) and defence and government departments (both 78 per cent increase) as the three that experienced the lowest.

Of course, while I have selected the period 1995 to 2015 because it aligns with the period being covered by this research and the available budget data of the regulators examined in this chapter, the dates selected are to some degree arbitrary. Certainly, the analysis presented in the paragraph above would change significantly if different start and end years were selected. Much more indicative is the rate of annual increase experienced. Figure 3 overleaf presents the annual increase, year by year, of total UK central government spending. The solid line plots actual changes, year on year, in total spending. The dashed line plots changes constant at 2013 prices (I have used an annual GDP inflator/deflator of 2.5 per cent to give spending in 2013 prices). When adjusted for inflation, the in government spending over the period is a more modest sixty per cent increase.

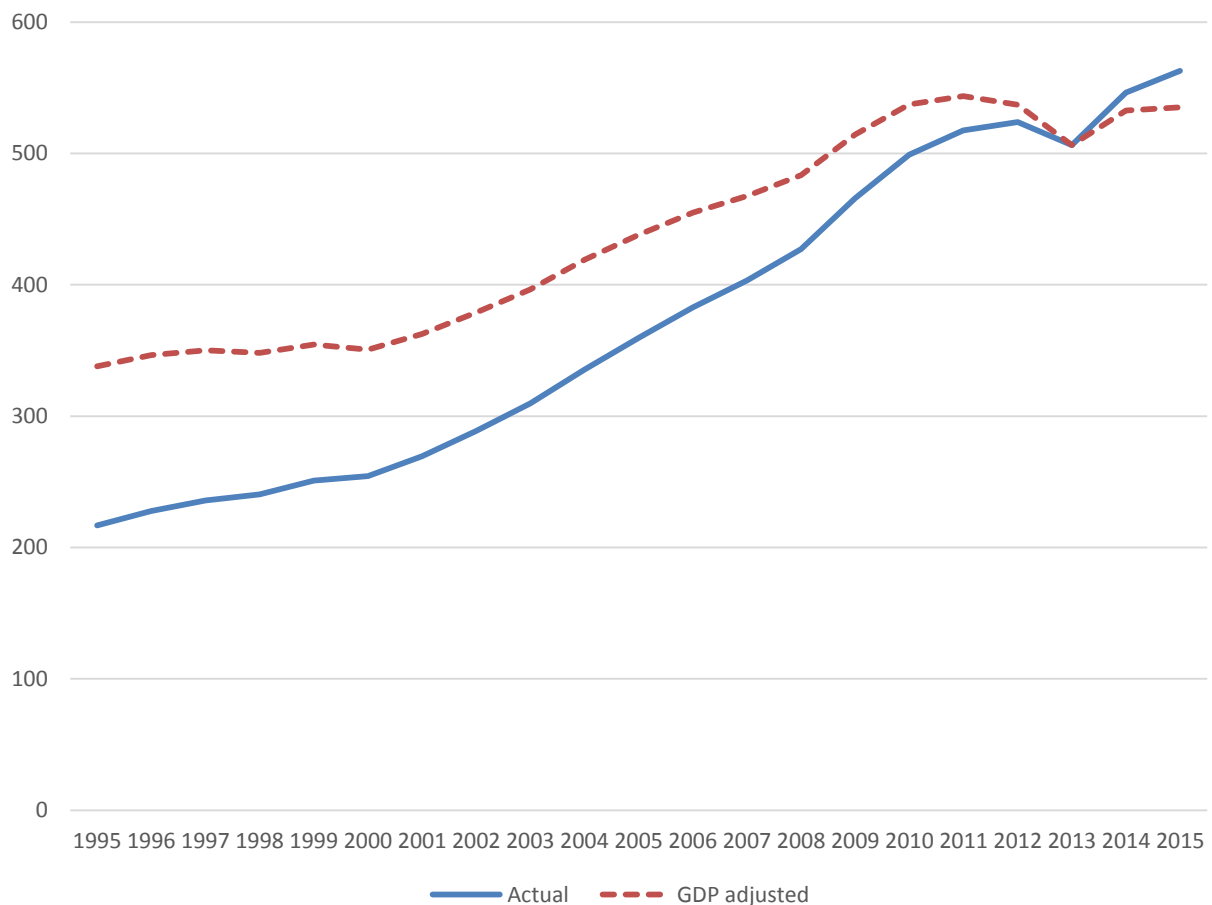


Figure 2: Annual change in total UK central government spending, actual and adjusted for inflation (April 2013 prices)(data source: HMT PESA 2014)

Many areas of government spending are per capita in nature, and some are (subject to eligibility criteria) demand driven. Over the period in question, there has been an increase in the UK's population. It is therefore important to consider how government spending per capita has changed. Figure 4 below gives the annual spend per head of population, both actual and adjusted for inflation (at April 2013 prices).

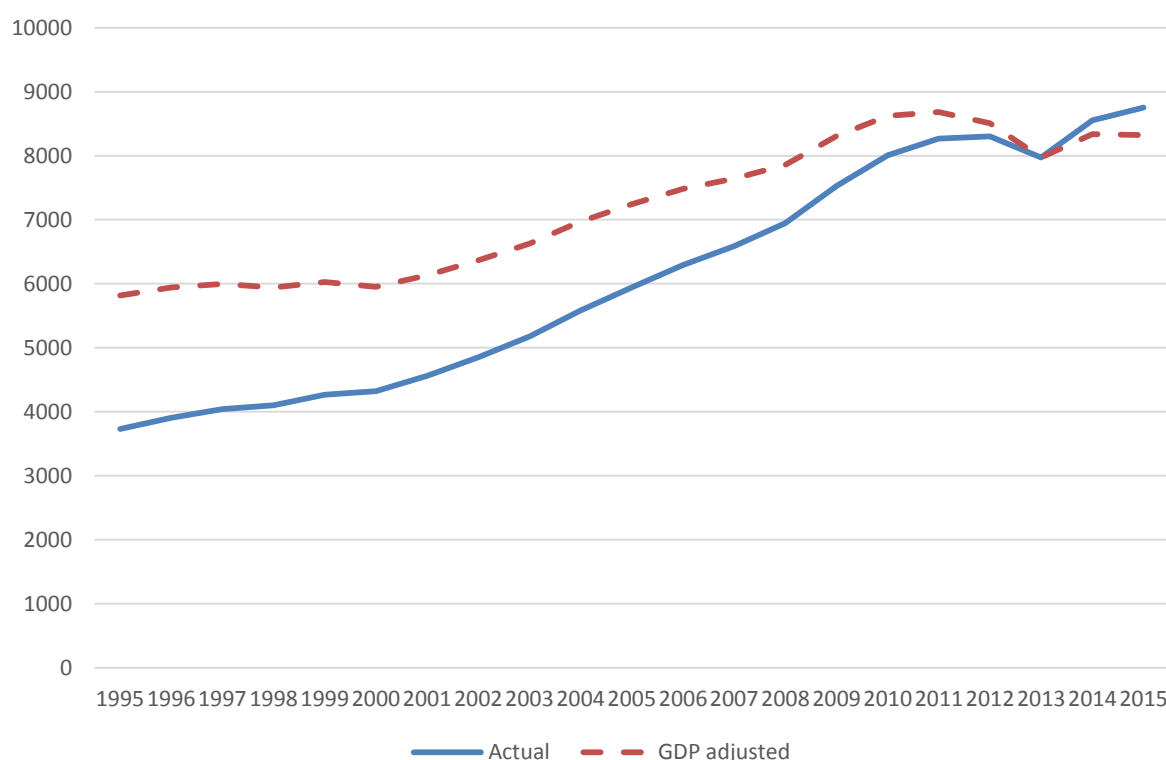


Figure 3: Per capita spend, actual and adjusted for inflation (April 2013 prices)(HMT PESA 2014)

As I have mentioned, using the start and end years of 1995 and 2015 is somewhat arbitrary. As I set out in section 5.5 below, the analysis of budget data undertaken in this research focused on the period 1998 to 2012, largely because of the availability of regulators' annual reports. Presenting overall government expenditure that covers at least this period would therefore seem reasonable.

5.3 The bureau-shaping model

In many ways, the bureau-shaping theory set out by Patrick Dunleavy in his seminal 1991 book *Democracy, Bureaucracy and Public Choice: Economic Explanations in*

Political Science is a conceptual theory rather than a formal model. While he provides a broad outline of the nature of bureau-shaping, and some general predictions in relation to different forms of government agency, he does not provide a detailed account of how of the implications of his approach to professions regulators and how to test the predictions of his model.

Indeed, while the bureau-shaping model has generated much debate at the theoretical level (Shaw, 2004), to date empirical testing of the model has been limited. Much of the existing empirical work is focused on the UK (James, 2003), and there has also been some empirical work in Australia (Dollery and Hamburger, 1996), New Zealand (Shaw, 2004), France and the USA (Matthewson, 1996).

Empirical work tends to focus on measuring changes in the composition of agency budgets over time (James, 2003), and is usually focused on substantive, step change programmes such as the Executive Agency reforms in the UK. As such, much of the empirical work to date assumes that changes in budgets that are consistent with the model's predictions are linked to bureaucratic behaviour and not that of other actors (Gains and Johns, 2007). It also assumes that changes in budgets that are consistent with the model's predictions are the result of the collective, self-interested actions of civil servants and do not consider alternative explanations. Indeed, to date only one study (Gains and John, 2007) has focused on the motivations of bureaucrats, though this did not link this with changes in agencies budget composition.

The agency type identified by Dunleavy that is most relevant to my research is that of the regulatory agency. Dunleavy uses just a few paragraphs in his book to outline this type of agency, its budget structure and the implications for civil servants budget maximisation versus bureau-shaping behaviours. He defines regulatory agencies as organisations that 'limit or control the behaviour of individuals, enterprises or other bodies, using licensing systems, reporting controls, performance standards...' (Dunleavy, 1991; p184). He suggests that regulatory agencies externalise compliance costs (that is, these costs are met by the regulated population), and so have relatively smaller budgets and smaller staff and their core budget (that is, the

money spent on the agency's own operations: on staffing, accommodation and office costs) represent a high proportion of their overall budget.

Dunleavy then provides a simple graph to illustrate how the budget size and shape of regulatory agencies should be expected to change over time, which is represented in figure 5 overleaf.

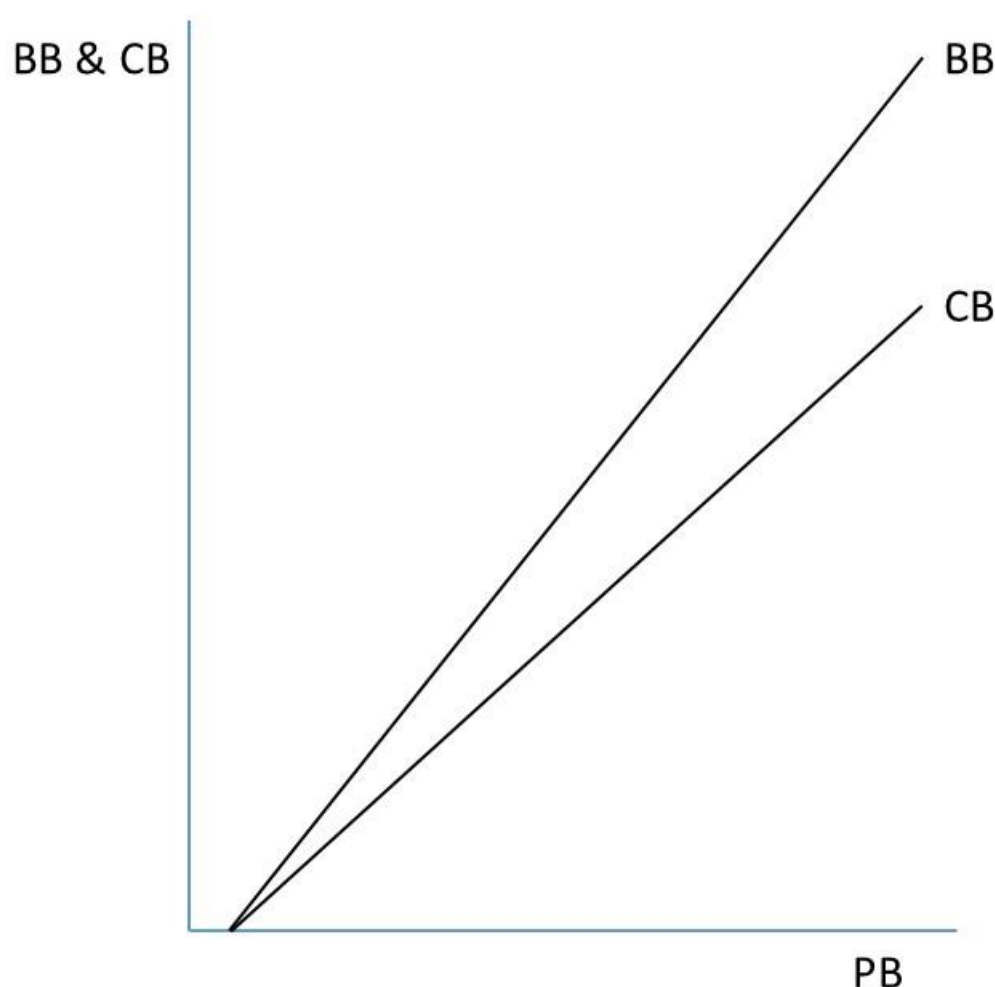


Figure 4: How budgets change in regulatory agencies (Dunleavy, 1991; p185)

Dunleavy provides the example of the Food Safety and Inspection Agency in the United States to illustrate the relationship between core and bureau budget in regulatory agencies. As I established in section 2.2, there are a number of different ways to categorise regulatory agencies, but the most common in the literature is to

distinguish between economic, social and occupations (professions) regulators. The example given by Dunleavy is one of social regulation (or, 'protective' regulation, as described by Eugene Bardach (1986)). Such regulation attempts to compel producers to internalise costs that would otherwise be imposed on others (usually non-users of their services). Producers (generally firms) are compelled by inspection regimes, which are an important part of social regulation.

The core costs of social regulators in the UK are met, at least in part, by general taxation and are generally not independent agencies but executive agencies of their sponsoring department. For example, the Environment Agency is funded in part by general taxation and additional money is raised from the issuing of licences and permits. In 2011-12, the agency received £749m from general taxation and a further £417m from fees charged for regulated activities (Cabinet Office, 2012; p70). Similarly, in 2012-13, the Health and Safety Executive received some £150m from general taxation and a further c£100m of income from fees, licences and other charges for regulated activities (Temple, 2014; p56). The same can be said of most economic regulators, which also receive funding from both charges to the regulated population and from general taxation. In 2011-12, Monitor (the economic regulator for health and social care) received c£15m from general taxation and £23.6m from fees charged to the regulated population (NHS trusts)(Cabinet Office, 2012; p109) . Similarly, Ofgem (the economic regulator of energy markets) had an operating income in 2011-12 of £61.4 million, comprising £40.0 million from licence fees and £16m from general taxation (NAO, 2012; p13).

Economic regulators aim to manage the negative impact of monopolies. Professions regulation create monopolies. In contrast to both social and economic regulators, the regulated population of professions regulators are individuals rather than firms. And whereas social regulators compel producers to absorb the costs of regulation through inspection regimes, professions regulators typically have no such mechanism. Instead, they rely on case-by-case fitness to practise assessments (that is, where an individual is referred to the regulator for an alleged breach of regulations, the agency will use a tribunal-type arrangement to consider (a) whether the breach occurred and (b) if so, whether this affects the registrant's future ability to practice safely and effectively). Finally, in contrast to both economic and social

regulators, professions regulators are entirely funded by fees charged to the regulated population.

Why is this important? For me, these differences suggest that the constraints faced by rational civil servants in economic and social regulators are slightly different to the constraints faced by those working in professions regulators. The differences in these constraints will likely mean that changes in size and shape of budget are slightly different to those conceived by Dunleavy, whose regulatory agency discussion is closer to economic and social regulation. In Dunleavy's conception of regulatory agencies, rational civil servants are most likely to engage in budget maximising behaviour, as suggested by figure 7 above. I would suggest, though, that because the regulated population of professions regulators are individuals and not firms and because they meet the entire costs of their regulation, civil servants are less able to engage in budget maximisation behaviour (for fear of negative feedback from the regulated population and professional bodies) and more likely to engage in bureau-shaping behaviour (by outsourcing the routine but specialised legal work involved in handling fitness to practise cases).

These constraints are also context-dependent; the size of the regulated population makes a difference to the extent to which civil servants budget maximisation behaviour is constrained. The cost of employing an extra member of staff when dispersed amongst the regulated population of an agency that registers 1500 individuals (such as the HAC, which regulated hearing aid dispensers between 1970 and 2010) is different in scale and impact than employing an extra member of staff when the regulated population is 500,000 people (as with the GTCE, which regulated teachers between 2000 and 2012). Thus, we might see institutional effects that go beyond the agency and budget type postulated by Dunleavy and a different set of predictions than those set out in figure 7 above.

5.3.1 Expected observations

As I established earlier in this chapter, much of the existing empirical research around bureau-shaping takes changes in aggregate government spending and, if

these changes are consistent with the predictions of the model, concludes that the research supports the validity of the model. While in some ways this might be considered consistent with **as-if** modelling of human behaviour in rational choice, for me it leaves a number of important gaps. Such research does not specify the mechanisms by which *x* affects *y*, how the actions of rational civil servants working collectively to shape their agencies leads to the observed changes in budgets. Neither does it examine alternative explanations of any observed changes in budget size or shape.

By setting out the causal mechanisms I expect to see if civil servants engage in bureau-shaping behaviour, I hope to address this clear gap in the extant literature. Drawing on this causal mechanism specification and the issues I raised in sections 5.2.1 and 5.2.2, there are three observations that I would expect to see if civil servants in the regulatory agencies investigated in this research have engaged in bureau-shaping behaviour. In this section, I specify and explain these expected observations and provide a similar account with respect to public service motivation theory. By comparing whether, and to what extent, each of these expectations can be observed, I seek to draw a conclusion as to whether public or private interest explanations provide have greater explanatory power in terms of the motivations of civil servants engaged in the professions regulation policy process. I have three expected observations in relation to bureau-shaping. These are outlined below.

Budget size expectation

First, I would expect the size of the budgets of each of the agencies investigated to increase by a greater proportion than overall UK central government spending. The changes in central government spending are set out in section 5.2 above.

Dunleavy's model predicts different levels of change in budgets, depending on the agency and budget types. Of these types, regulatory agencies (and delivery agencies) are most likely to see increases over time because their core budget (that is, the part of the budget spent on an agency's own operations, including staff and office space) is a significant part of their overall budget (Dunleavy, 1991; p193). In other agency types, such as control, transfer and contract, increases in overall budget have little direct effect on civil servants because large proportions of these

agencies' budgets are spent outside of the agency (on government programmes, welfare payments or contracts with third parties).

While regulatory agencies are closest to the Niskanen model, there is one important difference between a bureau-shaped and a budget-maximised regulatory agency: variation over time. While Niskanen assumes an almost linearly increasing agency budget, Dunleavy recognises that there may be times when shaping behaviour results in activities and budget centres being 'hived off' (p193) to other government departments or other agencies. In addition, in the last couple of years, there has been much talk of 'austerity' and reductions in public sector spending. Because professions regulators are small, staff-heavy and self-funding, I do not expect to see any significant impact of austerity on the budgets of the agencies I examine here. However, in terms of wider research (and certainly outside the remit of this thesis), whether rational civil servants take the opportunity offered by proposed and actual budget reductions to shape their agencies would be a fascinating area to research.

As I have already identified, I consider the size of the regulated population is a variable constraint; that is, regulators with smaller regulated populations are less able to increase their budgets than agencies with larger regulated populations. Staff are by far the largest proportion of regulatory agencies' core budget, and core budgets are a large share of overall bureau budgets. While increasing the pay and benefits of existing staff may be done in small, manageable increments (and therefore not pose any differential constraint on agencies), increasing the number of staff is likely to have a much greater impact on the overall budget, and how that budget is shared amongst registrants, for agencies with smaller regulated compared to larger regulated populations.

However, I would suggest that the small size of professions regulators, their statutory footing and the lack of any rivals or competitors to whom functions could be transferred, such 'hiving off' is unlikely to be observed in regulatory agencies generally. There are two possible exceptions to this in the regulatory agencies covered by this research. The HAC and the GTCE were both abolished during the period investigated in this research. Agency termination provides a unique opportunity to engage in shaping behaviour as rational civil servants take advantage

of termination proposals to focus agency work on the policy, rather than the implementation, aspects of termination. In addition, although both agencies were terminated, a number of agency functions were transferred (in modified form) to successor bodies. Agency termination may often lead to policy change, development and new policies being introduced (O'Leary, 2015; p3). I would therefore expect to see some differences in the final years of these two terminated agencies and their non-terminated compatriots.

Budget shape expectation

Over time, a clear expectation arising from Dunleavy's thesis is that the shape of regulatory agencies' budgets should change over time. For regulatory agencies, a high proportion of their budget is the core budget, which 'consists of those expenditures which are spent directly on its own operations...salaries and personnel costs...office....similar to the definition of 'running costs' used in UK central government' (Dunleavy, 1991; p181). The remainder of the budget for these agencies will be bureau budget, defined as 'all the core budget items, plus any monies which the agency pays out to the private sector, awarding contracts to private firms' (p181). Over time, the relationship between core and bureau budget is expected to change; professions regulators undertake many routine, non-policy functions that could be outsourced to reduce costs and thereby allow a high proportion of overall budgets to be devoted to policy work.

Driver of change expectation

Bureau-shaping is **collective action** (Dunleavy, 1991; p202). It is collective action that is driven by rational civil servants working together to change their agency to further their work-related interests, where they cannot further those interests by individual action (such as promotion or role development). While bureau-shaping behaviour might be triggered by some external event (a new policy proposal by government, or changes in the meta-regulatory regime, for example), regulatory staff actively, positively and collectively respond to this trigger and use it as an opportunity to bureau-shape and thereby further their work-related utilities. Such responses might include reorganising to create new policy functions or areas, and reducing or contracting out of routine administrative or support functions.

5.4 Public service motivation

Unlike the bureau-shaping model, there are no explicit predictions arising from public service motivation theory about regulatory agencies, or the size or shape of agency budgets. There are implicit assumptions about whether change is exogenously or endogenously driven.

5.4.1 Expected observations

Budget size and shape expectations

It is plausible to assume that increases in public expenditure will be viewed positively and cuts less so. Micheli explains:

“In addition to the potential for losing their jobs and having to work harder with fewer employees, evidence suggests that government employees often do not see the cost-cutting reforms as being very successful (Micheli, 2012)” (Wright, Christensen and Isett, 2013; p239)

Leaving aside for one moment the obvious self-interest of civil servants expressed in the first half of this quote, Micheli (2012) makes clear that public service motivated civil servants view the public interest as being served by increases, not decreases, in public spending. Although Moynihan found no evidence that PSM leads to budget-maximisation behaviour (2013; p19), I would suggest that he failed to take account of the collective action needed in most bureaucracies to change the size and shape of agency budgets. And, public service motivation is individual, not collective, action - PSM ‘describes the motivations of individuals’. (Houston et al, 2007; p5). There is little evidence that PSM affects collective decision making (Moynihan and Pandey, as cited in Moynihan, 2013; p6).

The PSM literature suggests that, rather than engage in collective action to drive change that furthers the public interest, individual civil servants respond passively to changes proposed by politicians and sponsoring departments either positively (where they perceive that such changes are intended to improve the delivery of

public services (Naff and Crum, 1999 as cited in Wright, Christensen and Isett, 2013; p238) or negatively, when they perceive the changes are the outcome of cost-cutting measures. It is reasonable to assume that public service motivated civil servants would not seek to increase their budgets, unless there are specific, public interest justifications for doing so. In the absence of such justifications, I would expect regulatory agency budgets to increase in line with changes in overall government spending.

Change driver

Unlike their omnipotent counterparts (who actively engage with any opportunity to further their own interests, subject to institutional constraints), public service motivated civil servants are passive responders to proposed changes. And any proposed change is assessed against whether it furthers the public interest. Where it is assessed to be in the public interest, any proposed changes are likely to be implemented. As such, PSM is 'a propensity to be a driver of change' (Desmarais and Gamassou, 2014; p133). The question for me, and the one I raise in chapter 7 on the public as an interest group in professions regulation, is how do public service motivated civil servants determine whether such changes would further the public interest? How do they define, measure, evaluate what it means to further the public interest, and what role do the public play in this process? Setting aside these questions for a moment, the passive response to proposed policy changes implied in the PSM literature means that I would therefore expect change to be exogenously driven and justified. I would also expect attempts to provide some evidence that any changes are in the public interest.

5.5 Implications

The above analysis provide several opportunities from which to explore the extent to which public or private interest models explain the motivations of actors engaged in professions regulation policy change. First, it should be possible to examine whether the budget structure and size predicted by either model is evident with respect to the professions regulators covered in this research by examining their budgets over a

period of time. In particular, the bureau-shaping model provides explicit specific changes in core and bureau budgets that should be directly observable.

Of course, evidence of budget size and structure changes that are consistent with the bureau-shaping model are not in of themselves indicative of bureau-shaping behaviour. And both bureau-shaping and public service motivation theories acknowledge that attraction to policy making is a key factor in the behaviour of civil servants. How then might I consider the explanatory power of these two models and draw some conclusion as to which is more convincing? For me, the answer to this question lies in the causal mechanisms underlying both theories and an examination of the changes in budget size and shape alongside discussion whether change was driven by external factors or internal factors and how civil servants responded to these changes.

5.5.1 Causal mechanisms

Bureau-shaping is collective action, where regulators seek to make changes to the size and shape of their agency budgets to further their work-related utility, represented by an attraction to policy-making. Public service motivation, on the other hand, is about individual motivation. It does not involve collective action and does not relate to agency decision-making. Attraction to policy making is the means by which public service motivated civil servants further their goal of furthering the public interest. The diagram overleaf provides a simply comparison of the causal mechanisms of these competing theories.

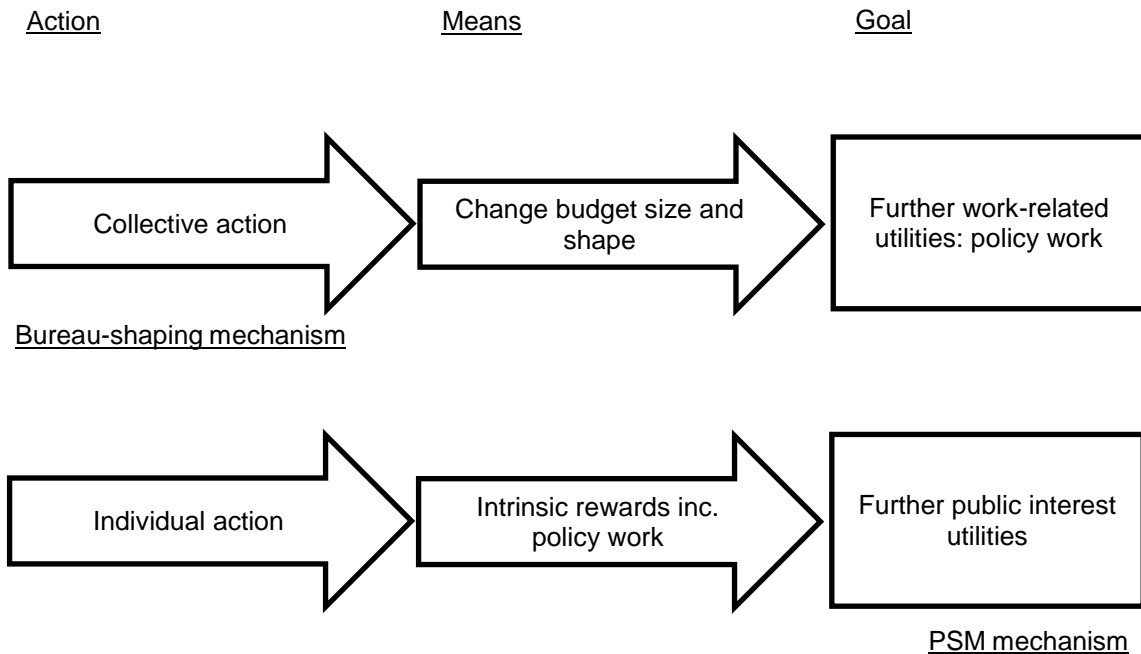


Figure 5: Comparison of bureau-shaping and PSM causal mechanisms

In particular, the public service motivation model suggests that only external factors (where responses could further the public interest) should precede budget changes. In terms of professions regulators, such external factors might include meta-regulation changes and increases in number of complaints made to regulators²⁷. In comparison, the bureau-shaping model suggests that such changes may not be preceded by changes in the external operating environment; internal factors may also precede changes in budget size and structure.

The table overleaf summaries the different expectations that arise from public service motivation theory and bureau-shaping theory. The more that my observations are in line with one set of expectations compared to the other set, the more power that model will be seen to have in explaining whether civil servants working in the professions regulators included in this research are motivated by the public or private interests.

²⁷ I recognise here that self-interested regulators may act to generate such external factors. I also recognise that such activity may not be evident in published policy documents, annual reports or budgets.

<i>Theory</i> Expectation	Bureau-shaping	Public service motivation
Budget size	Increase above overall government spending.	Increase in line with overall government spending.
Budget shape	Decreasing core to bureau budget. Contracting out of routine functions. Increase in policy work.	No specific expectations.
Change driver	Endogenous.	Exogenous.

Table 16: Comparison of expectations from PSM and bureau-shaping models

Finally, it should be stressed that *neither* model may fully explain professions regulation policy change. Other factors, not explored in this research, may explain such changes. Equally, it is possible that there will be evidence that meets expectations from both theories.

5.6 Method

There is not a direct one-to-one relationship between the case study professions and professions regulators. During the period of interest, hearing aid dispensers were covered by two different *statutory: independent*²⁸ organisations (the HAC until 2010, thereafter the HCPC) and pharmacists were covered by one *statutory: professional body* (until 2010) and then *one statutory: independent* regulator. Budget data for the Royal Society of Pharmacists of Great Britain (the *statutory: professional body* regulator of pharmacists) are not publicly available, and the limited number of annual reports for its successor body, the General Pharmaceutical Council, make any analysis infeasible. Psychotherapists are, and were not thorough the period of interest, covered by statutory regulation. Both architects and teachers were regulated by a single body.

²⁸ Using the typology I set out in section 1.5.

Budget analysis

Ideally, a mixed method would be utilised that would involve regression analysis combined with process tracking. Such a mixed method would start with regression analysis, which would be used to examine changes in the size of agency budgets, and their shape (bureau and core budgets as dependent variables) of the four agencies over time. However, such analysis poses a number of methodological issues (Blais and Dion, 1990) and data issues (Dollery and Hamburger, 1996).

There are inherent problems of undertaking statistical analysis with such small N cases, especially when entirely dependent on observation data. Difficulties in ensuring the validity and consistency between the statistical and qualitative components of such a research should not be underestimated (Brady and Collier, 2010). In relation to this research, the nature of budget data create a number of methodological issues. Evidence of successful bureau-shaping is reflected in the structure of an agency's budget (Shaw, 2004), but what about unsuccessful bureau-shaping behaviour? There are a number of reasons why such behaviour might not be successful, not least the constraints placed on professions regulators in the UK in terms of how their income is generated.

Secondly, budget data are inherently annual in nature, or, where not annual, is often a measure of planned rather than actual spend. In agencies such as professions regulators, which are relatively small in terms of size and budget, external shocks such as being subject to a judicial review or a fluctuation in the number of disciplinary cases may have a substantive effect on agency budgets against plan within any one year. As such, the financial data contained in an agency's annual reports and accounts provide the most appropriate data to use for examining bureau-shaping. These are audited by the Auditor General and are laid before Parliament (often a legal requirement). They provide a solid basis to determine actual spend by an agency. They also provide a commentary on the key issues faced by the agency over the year, the main budget pressures and organisational changes. When combined with corporate or business plans, they provide a rich source of material on the types of activities that bureau-shaping civil servants are likely to undertake. Their annual nature, particularly when discussing specific agencies with limited lives, reduces the usefulness of statistical analyses.

This leads to the third issue, how might we measure such bureau-shaping activities? While much of the existing empirical evidence on bureau-shaping focuses on the outcome of interest (changes in size and structure of agency budgets), what is needed is an understanding of the causal mechanisms by which these outcomes are generated. Here, there are issues of timing and sequencing, there are complex interactions between possible multiple decision points over time that lead a rational civil servant to decide that undertaking collective bureau-shaping activities is in her best interest. There are no direct measures of such activity; it might be reflected in statements, contained in annual reports and corporate plans, about changes to work practices, organisational structure and outsourcing arrangements. This generates problems with coding and also might not reflect when bureau-shaping activities occurred, as this may have happened months or years before it is reflected in actual changes to budget or organisation structure.

Similar problems exist in terms of public service motivation budget analysis, over and above the methodological issues inherent in using statistical analysis to compare these two competing models. There are also a number of other problems. First, the professions regulators covered by this research do not use a uniform approach to reporting their budgets; there are both differences between agencies and over time within given agencies. Secondly, as suggested above, one external factor that may help distinguish between public and private interest explanations of policy and organisational change is that of increase in the number of complaints received. It is widely acknowledged by a number of bodies that levels of complaints have been rising over a number of years. Health and non-health professions regulators, consumer groups and ombudsman all report such increases. However, as I have already mentioned, any change in the number of complaints might be driven by other factors, including internal changes in prosecution policies (reducing the threshold at which regulators make the decision to consider a complaint as a fitness to practise issue), undertaking reviews or running advertising campaigns.

This analysis therefore does not employ statistical analysis. Rather, it attempts to develop a narrative of changes in four professions regulators in the UK. Such an approach is considered appropriate as the essence of bureau-shaping is the

strategic interactions between actors (in this case, civil servants within each agency, between agency staff and their sponsoring department and between the agency staff and the profession it regulates), taking account of the specific trade-offs, constraints and goals (Levi, 2009) faced by civil servants in these four agencies. Such an approach recognises the causal complexity faced in assessing whether, to what extent and how bureau-shaping might occur. It seeks to identify whether the narrative suggests that the causal mechanisms set out in respect of bureau-shaping or with respect to public service motivation are more plausible.

To develop the narrative, budget data for each of the four agencies under investigation were collated from the published Annual Report and Accounts covering the period 1998 to 2012. These reports are generally laid before Parliament at some time (usually three months) following the close of the financial year. They generally give a breakdown of income and expenditure for the agency, including staff numbers and costs by department or function. Budget data were uplifted to April 2013 prices using a 2.5 per cent GDP inflator. Budget data were then coded as either 'core' or 'bureau' in line with Dunleavy's typology. Differences in budget definitions between agencies and within agencies over time meant that a clear distinction between core and bureau was not always possible. Therefore, two measures of core budget were used within the analysis; a core minimum included just staff and office costs and a core maximum that included all costs except legal/professional²⁹ and computing/IT³⁰ costs.

There are, of course, many competing ways to present data from budgets analysis of government (and government agency) expenditure. Overall changes might be presented, either in actual terms or adjusted for inflation. Population based measures might also be utilised; the registrant population of any regulatory agency fluctuates between years and over the longer term, which differentiate impacts on both income and expenditure. In this chapter, I have tried to present the data in a number of different ways as I am cognisant that one particular measure may

²⁹ In common with most professions regulators in the UK, the four regulators covered by this analysis have outsourced the legal costs arising from dealing with fitness to practice (disciplinary) cases.

³⁰ Each of the four agencies had outsourced their IT support during the whole period covered by the analysis.

(whether consciously or not) tend to support an interpretation in line with one set of expected observations over the other.

Each of the four agencies experienced some level of change in the number of registrants over the period. The smallest organisation in terms of registrant size was the HAC. Over the period from 2000 until the transfer of its register to the HCPC, it saw the number of registrants rise from 1165 to 1877. The ARB saw its registrant numbers increase from just under 30,000 to around 33,500, an increase in just under twelve per cent between 2000 and 2012. The GTCE experienced a seventeen per cent increase in its registers, from around 500,000 in 2000 to just over 585,000 at its abolition. The HCPC saw both an increase in the number of professions it regulates and the numbers on its registers: from twelve to sixteen professions during the period since its establishment in 2002 and from around 144,000 to around 220,000 registrants. Therefore, total changes over time and changes per registrant are reported.

The second stage of analysis has involved content analysis to explore the whether the evidence is more consistent with the expected observations arising from the bureau-shaping or public service motivation models. Content analysis covered annual reports and accounts, business and corporate plans and policy statements by each of the four regulatory agencies. It also included Green and White papers and other policy documents published by the UK government departments and wider government agencies. A total of $n=153$ documents were included in the analysis. A hypothesis coding framework (Weber, 1990) was generated developed to identify decisions leading to, and explanations for, any changes in the level and structure of budgets of the four agencies over the period 2000 to 2013 and to explore whether the evidence was consistent with the expectations summarized in table 16 in section 5.4 above. A copy of the first cycle coding framework is provided in the appendix. Following the first cycle coding, a second level of coding was undertaken to identify key themes and commonalities, using a pattern coding framework. Pattern codes are 'explanatory or inferential codes, ones that identify an emergent theme, configuration or explanation' (Miles and Huberman, 1994 as cited in Saldana, 2009; p152). This resulted in a nine-node coding frame, outlined in the appendix. Coding was undertaken using NVivo v10 software.

The remainder of this chapter is structured as follows. First, a narrative is given for each of the four regulators, setting out the key factors affecting the size and structure of the agency's budgets. In doing so, I explore whether these are consistent with the expected observations arising from the bureau-shaping or public service motivation models. I then draw conclusions and set out a series of issues for further developing this analysis.

5.7 Architects Registration Board (ARB)

The ARB started operations in 1998 as the successor to the United Kingdom Architects Registration Council (UKARC). The ARB annually publishes financial information, including its income, expenditure and size of its register. In each year since 1999, the ARB has seen its total expenditure increase in both actual and real terms, from just under £2m to just over £3m (April 2013 prices). Figure 7 illustrates the annual changes in expenditure at the ARB between April 1999 and March 2013.

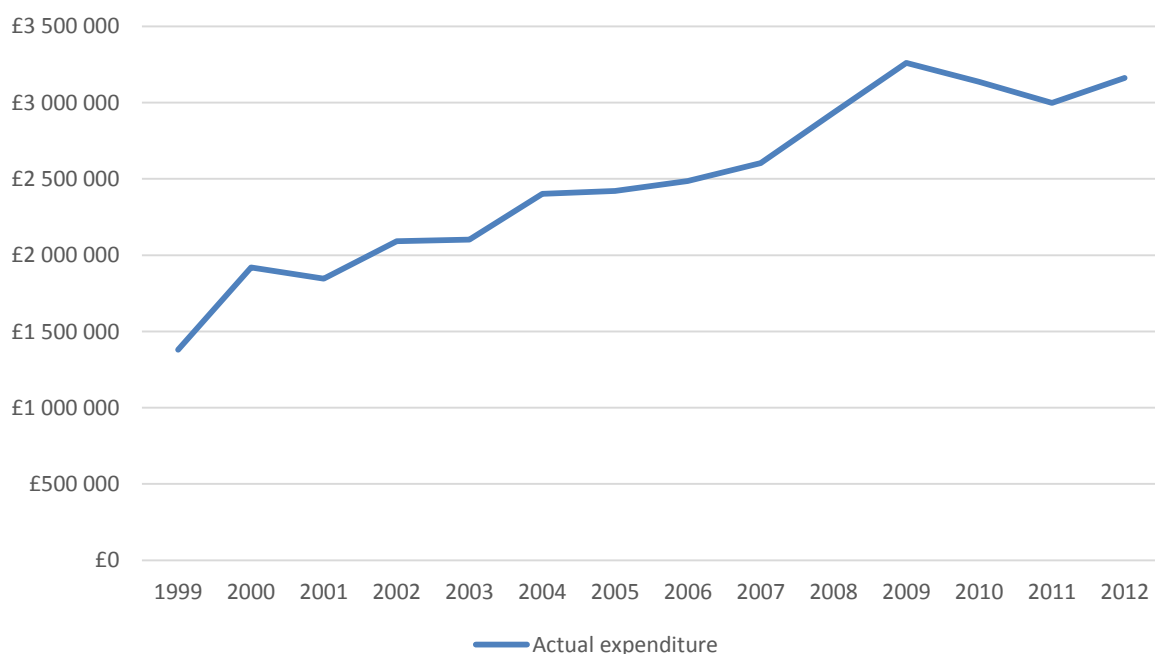


Figure 6: ARB expenditure, 1999 to 2012

The number of individuals registered as architects in the UK has increased considerably since the ARB was formed. In 1999, just under 30,000 individuals were registered; as of December 2012, that number was just over 34,000³¹ (ARB, 2013). Figure 8 presents data on the number of people registered as architects in the UK between 1991 and 2012.

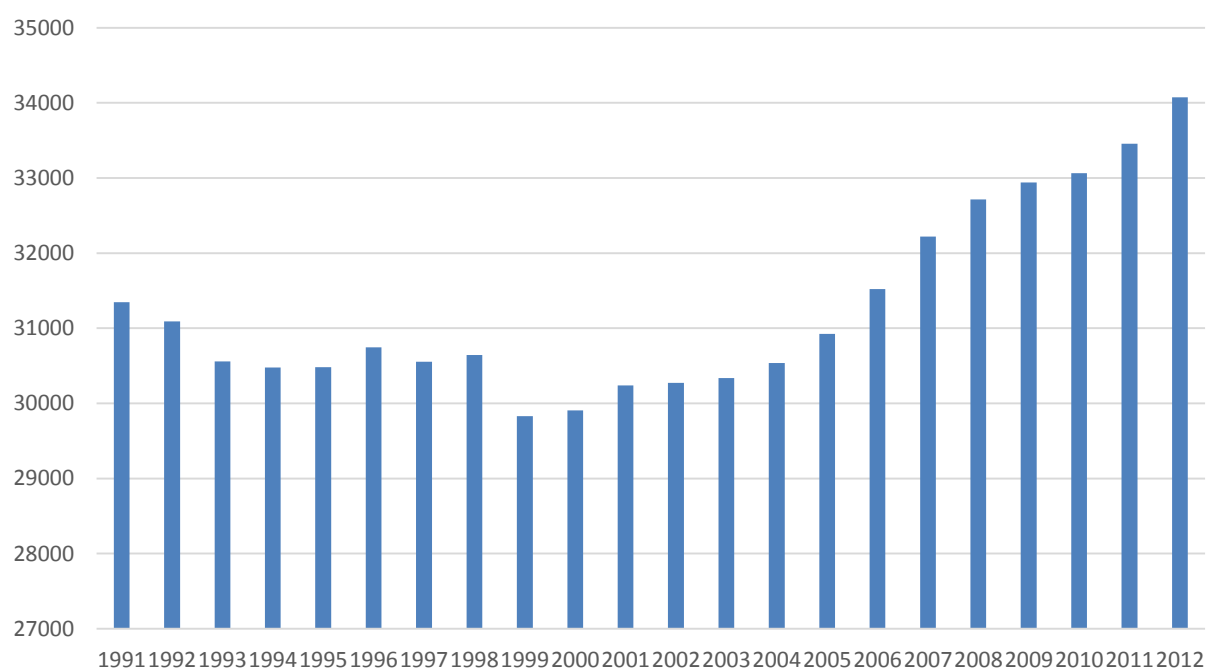


Figure 7: Individuals registered as architects in the UK, 1991 to 2012 (data sourced from ARB, 2000 and 2012)

Because of the change in number of registrants, presenting data on changes in the overall budget may be misleading. Figure 9 overleaf presents spend, per registrant, in each year between 1999 and 2012. This has been calculated by simply dividing the total expenditure by the number of registrants in that year (although it should be noted that the ARB publishes its registrant data as the number of individuals registered at the 31st December in each year and its budget data by financial year). The secondary axis provides the annual increase on previous year in percentage terms.

³¹ This number includes some 4,000 individuals registered by residing outside the UK.

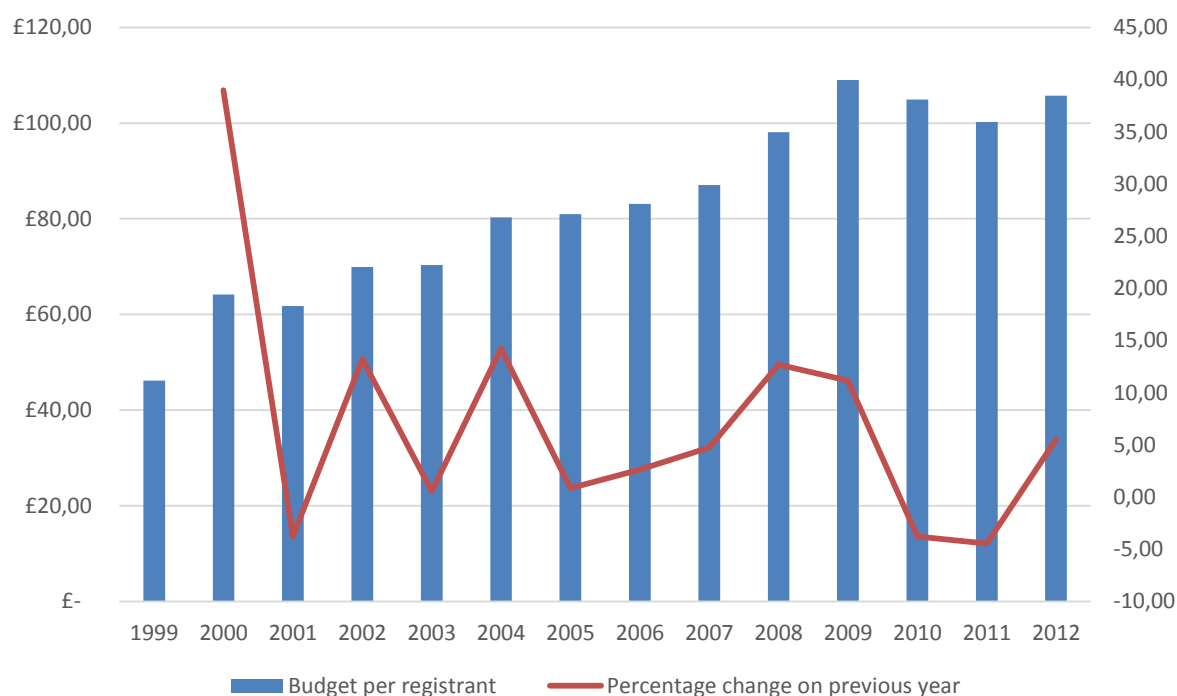


Figure 8: Spend per registrant, 1999 to 2012

5.7.1 Analysis

Budget size expectations

It is clear from the above that the budget of the ARB increased over the period 2000 to 2012, both in global terms and per registrant. The increase per registrant is particularly interesting given that the number of registrants also increased. This suggests an increase in both registration fees and number of registrants over the period. Much of the work of professions regulators is relatively routine; processing registration applications, quality checking qualifications, case managing of complaints. In many of these areas, I would expect to see some economies of scale, but this does not seem to be the case at the ARB.

Taken at face value, it would be possible to suggest that both the increases in both the total budget (even adjusted for inflation) and the budget per registrant support the budget size expectation arising from the bureau-shaping theory. But how do these changes compare to changes in overall government expenditure? If the changes are of a similar nature to that of overall government spending, they may

simply reflect national political priorities rather than the bureau-shaping or budget maximising behaviour of rational civil servants.

Data on actual spend per head for both government and the ARB is presented in figure 10. There are of course significant differences in how much the government spends per head of population and how much a government agency, such as the ARB, would spend per registrant. In figure 10, ARB spend per head is given as a secondary axis to enable comparison of the pattern of change in overall government per head of population and spend per registrant.

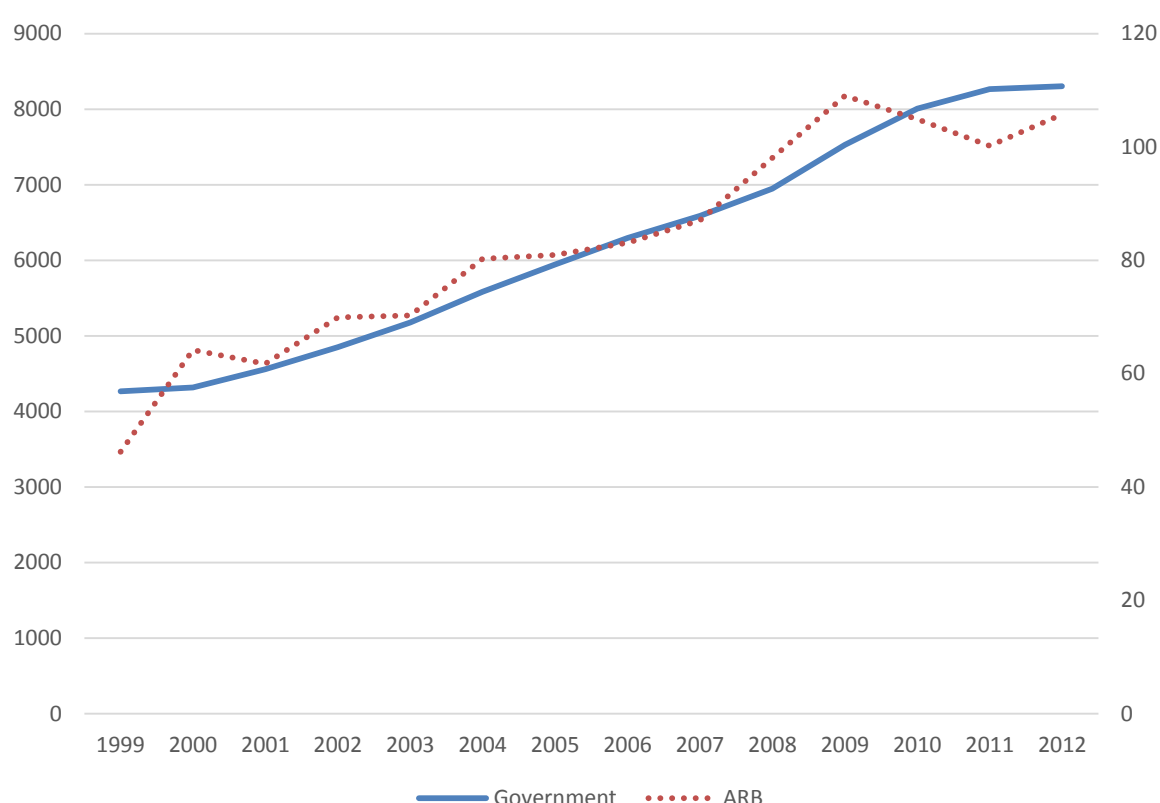


Figure 9: Changes in actual spend per head in £, UK government and ARB, 1999 to 2012

This analysis suggests a similar pattern of growth in total spending can be observed at the ARB compared to overall government spending. After an initial substantive increase experienced by the ARB in its first year of operation, growth was consistent over the period. This analysis is more in line with the public service motivation budget size expectation than the bureau-shaping expectation.

However, as I suggest in section 5.2.1 above, Dunleavy's expected changes in the size of the budget of regulatory agencies does not take into account the constraints placed on civil servants by the self-funding nature of professions regulation. As I establish in the architects case study in chapter 4, there has been a difficult relationship between the ARB and the professional body for architects, RIBA. This difficult relationship, and the antagonism expressed by the RIBA and many individual architects about the change in regulatory regime, may have presented a considerable constraint on the extent to which civil servants could engage in budget maximizing behaviours.

Budget shape expectations

Not only has the size of the ARB's budget increased in real terms since 1997, but its structure has also changed. Figure 11 illustrates the annual changes in registrant numbers and the change in the total (bureau) budget and core budget, drawing on Dunleavy's bureau-shaping typology. Registrants are the only source of funding for the ARB (in line with most professions regulators in the UK, the ARB is 'self-funded' though fees charged to registrants) and the ARB has specific statutory functions in relation to the regulation of its registrants. Given this, figure 11 below sets out the bureau-shaping analysis per ARB registrant.

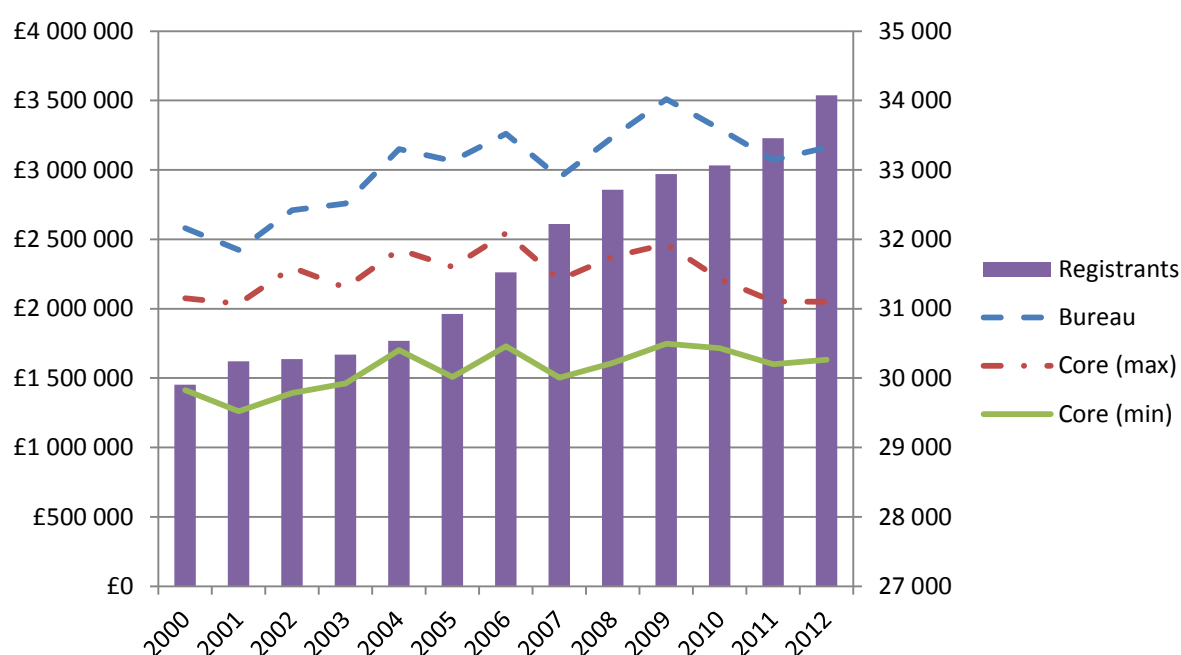


Figure 10: Changes in ARB budget, 1999 to 2012 (April 2013 prices)

This analysis is in line with the expectations arising from Dunleavy's bureau-shaping model with respect to regulatory agencies. The model predicts increases over time in the bureau budget, which for regulatory agencies is the total budget. In real and actual terms, and per registrant, the ARB's bureau budget increased over the period April 1999 to March 2013. In 1999, the bureau budget per registrant was £63.83 compared to £92.81 in March 2013. The average per registrant cost over the period was £92.69, with a standard deviation of £10.31. However, the cost per registrant in 1999 is an outlier; excluding the 1999 data gives an average per registrant of £94.91 and a standard deviation of £7.33.

The change in bureau budget per registrant was not linear over time, and there were some significant variations during the period. Per registrant, the bureau budget was at its lowest in 1999 and peaked in 2009, at £106.59 per registrant (April 2013 prices). Taken as a total budget (adjusted to April 2013 prices), the ARB's bureau budget in 1999 was just over £1.9m and in March 2013 was around £3.1m. The budget peaked in 2009, when it was just over £3.5m. The average over the period was £2.934m with a standard deviation of £407,591. As with the per registrant bureau budget, the total budget for 1999 is somewhat of an outlier, and excluding these data give an average of £3m and a standard deviation of £301,608.

The bureau-shaping model also predicts that the proportion of bureau budget accounted for by the core budget will decrease over time, as rational civil servants seek to outsource routine administrative work. The model predicts that core budgets will be a relatively high proportion of a regulatory agency's budget, since staffing is the major cost incurred by such agencies. Changes in the ARB's budget over the period are in line with these predictions, with the core budget (on both my maximum and minimum definitions) reducing as a proportion of the bureau budget over the period. In 1999, the core budget accounted for between fifty eight (minimum definition) and eighty two per cent (maximum definition) of the ARB's bureau budget. By 2013, these proportions had changed to fifty two and sixty five per cent respectively (core maximum average was 75.51 per cent with a standard deviation of 6.2. Core minimum average was 52.25 per cent with a standard deviation of 2.21).

This analysis reflects the differences between the core maximum and minimum measures used in this research. The core minimum includes staffing and office costs and the core maximum includes these and other administrative costs (excluding fitness to practise costs and IT costs). There are differences both between regulators and within regulators over time in how various costs are accounted for in their annual reports, and dividing the core budgets in this manner was done to enable some cross case comparisons.

By far the largest single element of the core budget relates to staffing costs; around fifty per cent as an average core maximum over the whole period (74 per cent of the core minimum. SD = 5.98 for core maximum and 5.22 for minimum). Staffing costs account for around two thirds, on average, of the total expenditure of the ARB. Although there was a significant increase in the bureau budget between 1999 and 2000 (1999 is an outlier for both the total and per registrant bureau budget), this is not explained by any changes in staffing costs. Indeed, in real terms, staffing costs actually reduced between 1999 and 2000. Rather, a significant increase in office costs, from £270,225 to £583,048, largely explains the change between 1999 and 2000.

Overall, I would suggest that the changes in shape of the ARB's budget are in line with the expectations arising from the bureau-shaping model. Of course, the question is then, what factors might explain these changes? Are these drivers of change in line with the exogenous drivers I expect to see if civil servants are motivated by the public interests, or the endogenous drivers I expect to see if civil servants are motivated by their own self-interests?

Change drivers expectations

The budget shape analysis suggests that the ARB's core budget decreased as a proportion of its overall budget. While this change is in line with the predictions of the bureau-shaping model, the key question is what are the drivers of this change, how did regulators respond to these changes and were they motivated by public or private interests when responding?

The annual reports, business plans and other policy documents produced by the ARB, and documents produced by its sponsoring department (Department for Communities and Local Government) and by the main professional body (Royal Institute of British Architects or RIBA) contain a wealth of information about possible drivers of change in the structure of the ARB's budget. My analysis of these documents suggests three key drivers need to be considered. These are: first, significant changes to the EU automatic recognition of architects' qualifications system; second, an increase in the level of complaints about the conduct of architects over the period in question; and, finally, its relationship with the RIBA and with the profession.

Changes in EU automatic recognition of professional qualifications system

As I established in chapter 1, professions regulation in the UK is not a stand-alone regime but interacts with EU systems designed to ensure free movement of people and services between EU member states. There are three levels in this EU system, of which the most 'integrated' is system for automatically recognizing qualifications gained in one state across the whole of the EU. Only a handful of professions are subject to this automatic recognition system, of which architects are one such profession. Following significant changes to the design and function of the professional qualifications regimes, the system for architects was radically overhauled. In its 2006 annual report, the ARB noted:

"The speed of change in European legislation is accelerating and will take significant resources to be properly implemented. The new Qualifications Directive is introduced in October 2007, with measures aimed at facilitating freedom of movement for individual practitioners across member states. This is followed by the Services Directive, coming up in 2009, aimed at facilitating cross-border services." (ARB, 2006)

This was not a one-off driver or change, nor can it be considered that the ARB simply responded to external changes. Indeed, the ARB appears to have actively engaged with the process, taking the opportunity to develop policy networks and

take a leading role in the development of the EU system. In one of its first annual reports as a new regulator, the ARB commented:

“European legislation is of increasing importance to architects and to our role as the regulator of the UK profession. We are active members of the Architects Council of Europe, involved not only in discussions over the proposed changes to the current EU Architects’ Directive (which took 20 years to negotiate) but also changes to ensure an open market for architects within the European Community.” (ARB, 2001)

While ARB regulators actively engaged with this process and focused much effort on the policy networks and other responses to these developments, the ARB clearly located this as an external driver of change. In its 2007 annual report, the ARB stated that its increasing workload was ‘almost exclusively due to external factors’ and identified the EU as one of these external factors. And while engaging with these developments was important to the ARB (judging by the large number of references in its annual reports and business plans), it is not possible to judge the impact of these changes on the ARB’s budget. The ARB does not provide information in its annual reports on expenditure by administrative function or by specific projects, so it is not possible to determine how much resources was committed to this work and whether it resulted in any new or enlarged policy function.

Increase in complaints

Unlike social regulators, professions regulators do not compel their regulated populations to internalize costs through the use of inspection regimes. Rather, they take reactive, case-by-case action when matters of possible non-compliance are made known to them. Typically, most professions regulators call these systems ‘fitness to practise’ regimes. This generally involves a three-part test to decide whether and what action is taken against the individual professional. In line with most professions regulators, decisions on whether to start such action are triggered by a complaint or referral made to the regulator by a member of the public, a fellow registrant, an employer, a professional body or the professional concerned. A consistent theme across most professions regulators in the UK over the last twenty years has been an observed increase in the number of complaints received (DH,

2006; p5), although the level of increase varies by regulator and by sector (with healthcare professions typically seeing the highest level of increase).

This increase in complaints is an important driver of change in both the size and shape of agency budgets. Dealing with complaints is a costly business, as the ARB makes clear a number of times in several of its annual reports and business plans. And most professions regulators contract out to the management and/or prosecution of complaints to specialised legal firms. As such, increases in the number of complaints can both affect the size of the budget, and its shape (by altering the overall budget accounted for by core budget activities as a proportion of the overall budget).

Figure 12 below compares the percentage of the ARB's total budget accounted for by staffing, dealing with complaints (legal and profession) and all other expenditure. Figure 13 overleaf provides data per registrant on these three areas of expenditure.

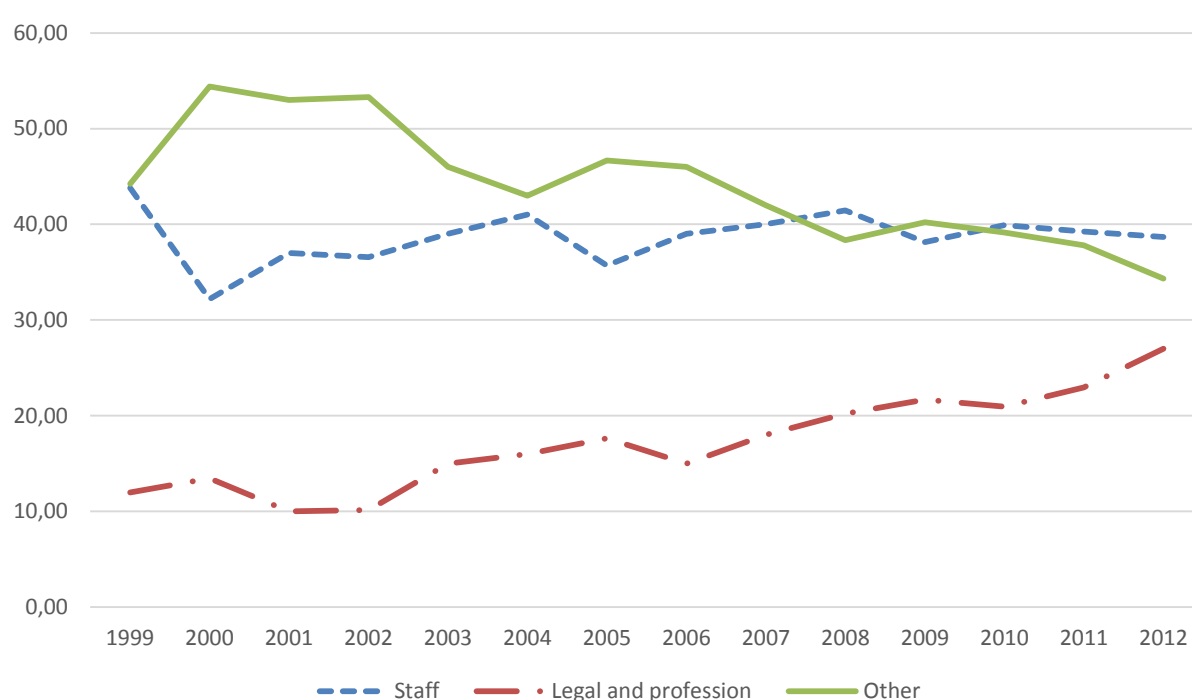


Figure 11: Changes in ARB budget - percentage spent on staff, legal and other costs, 1999 to 2012 (April 2013 prices)

This analysis suggests that an increasing proportion of the ARB's budget was being used to deal with complaints received about the conduct of its registrants. In 1999, the ARB spent around twelve per cent of its budget on dealing with complaints; by March 2013, this figure was around twenty eight per cent (average: 17.14 per cent; SD = 4.83). In contrast, there is little change in the proportion spent on staffing over the period, with an average of 38.69 per cent and a standard deviation of 2.7 percentage points.

The picture is slightly different when spend per registrant is considered. In terms of costs associated with dealing with complaints, in 1999 the ARB spent £7.65 per registrant compared to £25.05 in 2012/13 (average £16.14, SD = £5.39).

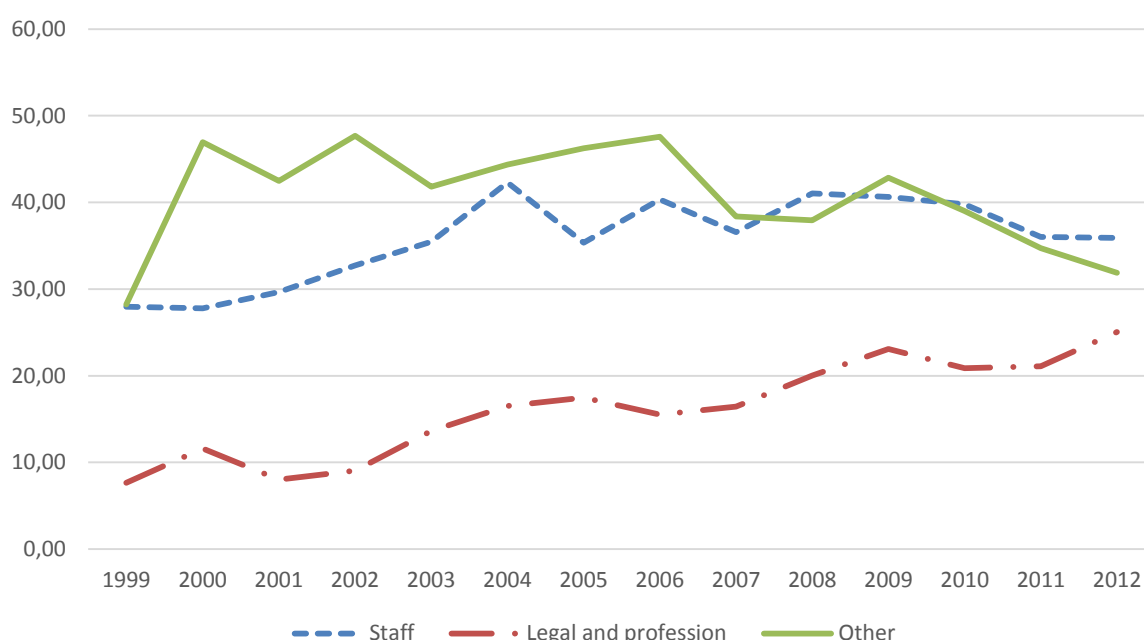


Figure 12: Changes in ARB budget - staff, legal and other costs per registrant, 1999 to 2012 (April 2013 prices)

However, the above analysis suggests that, whereas the staffing costs remain fairly static as a percentage of total budget, per registrant they increase over the period. This is perhaps counter-intuitive; as the number of registrants increases over the period, would economies of scale not suggest that the cost per registrant should decrease rather than increase? In 1999, the ARB's staffing cost per registrant was just under £28 compared to nearly £36 in 2012/13. At its peak in 2004, the staffing

cost per registrant was £42.30 (across the period, the average was £35.82 with a standard deviation of £4.66).

It is clear that the ARB saw this increase in complaints as being externally driven, as it commented in its 2007 annual report, which noted that its increased workload was in part due to ‘the public’s attitude to complaints, and a growing awareness of ARB and its work.’ (ARB, 2007). However, I would suggest that the ARB responded to these complaints in ways that might increase the work-related utility of its civil servants. For example, it took the opportunity to use complaint data to develop new guidance documents and related policy work. In its 2003 annual report, the ARB stated that:

“Having drawn on data from the complaints it receives, as well as guidance already available, ARB published a guidance note on CPD to assist architects in deciding what form of CPD they might wish to undertake. The guidance, which has been positively received, places no additional burden on architects, because CPD regimes already exist within the professional bodies and elsewhere.” (ARB, 2003)

A second reason why the increase in complaints may not be an entirely external driver is in relation to the protection of the title of architect. As I established in chapter 1, the UK typically regulates professions by protection of title – individuals using a protected title when not registered with the relevant regulator are liable to criminal prosecution. However, while such use of a protected title leaves the individual open to prosecution, in reality very few individuals are prosecuted. The HCPC, for example, regulates some sixteen different professions and published a protection of title prosecution policy and detailed guidance. Its website suggests that no prosecutions have been made in at least six years. The HAC had both protection of title and function powers covering hearing aid dispensers. During its forty year existence, fewer than five attempts at prosecution were made, most of which were in the 1970s.

In contrast, the ARB has engaged in a number of streams of work in relation to protection of title. Early on in its life, the ARB made clear that:

“ARB puts resources into prosecuting all those found using the title “architect” who are not on the Register. ARB understands the value the profession and consumers place on this, and works proactively to prevent misuse of title.” (ARB, 2001)

Over the next five years, this was a recurring theme. In 2006, it stated:

“A key feature of ARB’s role under the 1997 Architects Act is to ensure that only those registered with ARB use the title “architect” in business or practice. In 2006, we started to review all the main business directories to identify incorrect entries under the “Architects” classification.” (ARB, 2006)

In 2005 the ARB had commissioned an independent review of its work around protection of title, which was justified on the grounds of ‘meeting the expectations of consumers and the profession’ (ARB, 2005). The outcome of this work was a review of resources committed to protection of title.

It is clear from the above quote and from other comments in ARB and RIBA documents that the professional body played an active role in promoting this workstream. Alongside this work, the professional body, the RIBA, was also commissioning work on the future of the regulatory regime. This was undertaken by Sir Christopher Ball and was published in 2009. This report reflects the poor relationship between the RIBA and the ARB that had existed since the ARB was established in 1998. The report made a number of recommendations, which are discussed in greater detail in the relations section below.

Relationship with the profession and professional body

One of the clear themes that emerges from documents and reports published by the ARB and the RIBA is that, for most of the lifetime of the ARB, there has been a poor relationship between the two organisations. From the outset, there were tensions, with the ARB reporting in 2001 that ‘(c)learly, the profession wants a more proactive regulator in its dealings with the public and the construction industry’ and that it would take action to ensure that it would ‘ask architects and consumers for their

views on how the Board was progressing in delivering its statutory functions' (ARB, 2001).

At several points (2004, 2005, 2009 and 2011) the extent of this poor relationship manifested itself in proposals by RIBA to review, abolish or significantly amend the regulatory regime covering architects. This seems to have continued the theme of poor relations between the professional body and its regulator. In an RIBA report on the future of architects' regulation, its author, Sir Christopher Ball, commented:

"..both architects and the RIBA itself campaigned for several decades for the enactment of statutory R&R, which was finally granted in 1931. However, neither ARCUK, the first statutory body, nor the ARB, its successor, has proved wholly satisfactory to all parties." (Ball, 2009)

Issues came to a head in 2005/6 when a number of architects ran a campaign against the ARB. This was first reported in 2005, when the ARB stated:

"In recent months, there have been calls from a small, but nonetheless vocal minority of the profession for ARB to be placed under a statutory duty to be prudent and economical. ARB would like to offer them an assurance that it is ever-conscious of the need to husband carefully every one of its resources, including those relating to finance. ARB undertakes only those duties and responsibilities which the 1997 Architects Act requires it to deliver, in a way which is both practical and cost-effective. No more, and no less." (ARB 2005)

For example, in 2006 the ARB reported that 'later this year, the Government may have to consider proposals from the RIBA to alter the Act' (ARB 2006), and in elections to the ARB board that year, five of the seven architects elected did so on a mandate of 'reforming' the ARB (ARB, 2006).

This difficult relationship seems to have prompted the ARB to undertake a number of reviews of its work, rules and regulations, services and functions. This has been a consistent theme over the lifetime of the ARB, and could both reflect responses to the external pressures emanating from the professional body or a focus on work-

related utility (reviews being an important part of policy work). For example, in 2011 the ARB commented that:

“Keeping our Rules under regular review and consulting on any changes with a wide range of stakeholders - including architects - reflects the importance of continuously looking at the way we work to deliver the Act, to make sure we are following good practice and working in the most efficient way.” (ARB 2011)

There is also evidence that the ARB spent a great deal of time trying to develop the relationship with the profession and the professional body. In some areas (most notably, the approval of education programmes for entry to the register), this has led to joint protocols and working arrangements.

Exogenous or endogenous drivers?

The three key drivers of change in the size and shape of the budget analyzed above present a mixed picture in terms of assessing whether the changes are in line with the expectations arising from the bureau-shaping model or public service motivation theory. One way of visualizing this is to present the number of times text included in the content analysis was coded as ‘external’ drivers and how many as ‘internal’ drivers. The graph overleaf represents this analysis.

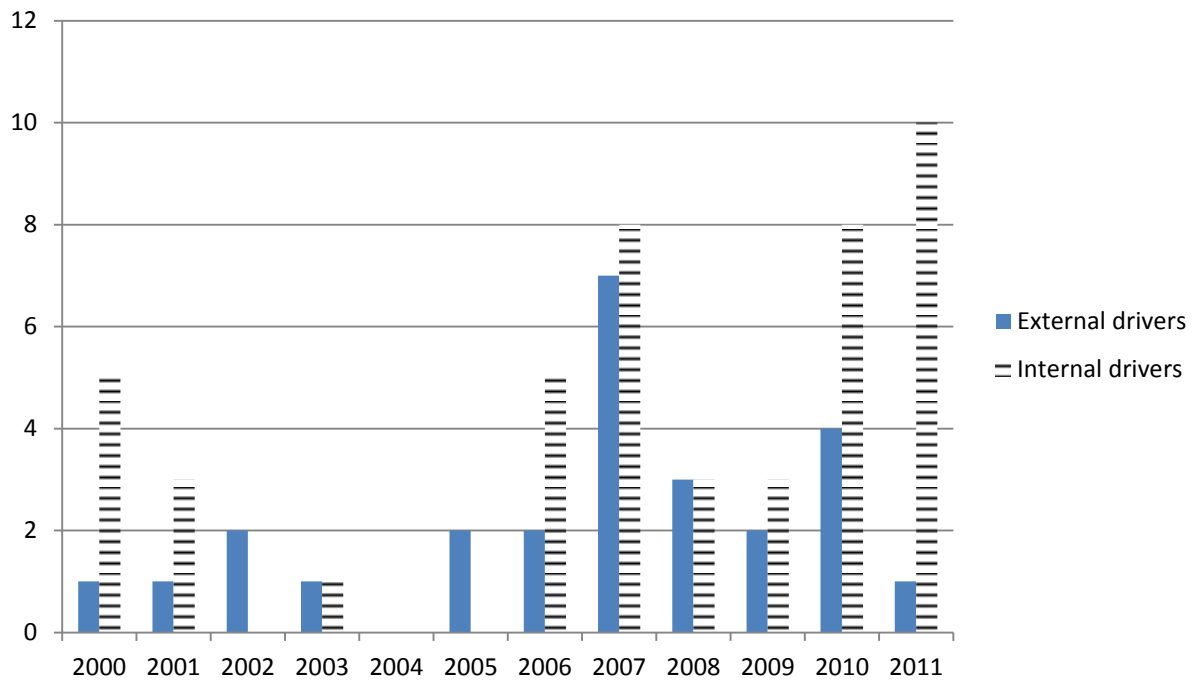


Figure 13: Count of external and internal drivers

This suggests that internal drivers were a more important source of change (at least, numerically) than external. Even in 2006 and 2007, when the ARB had committed a considerable amount of time and resource to the development and implementation of the EU automatic recognition of qualifications system, internal drivers of change seem to be more important. As I have previously suggested, there are a number of instances when an external proposal or issue was seized by staff at the ARB to driver internal change, and this seems to have affected the overall size and shape of the budget. This would be in line with the expectations arising from the bureau-shaping model.

5.7.2 Conclusions

To some extent, there is evidence in line with the expected observations arising from both the bureau-shaping and public service motivation theories with respect to the ARB. This of course reflects the causal complexity inherent to public policy, where multiple causes and complex, multi-point decision paths make it difficult to identify and understand the causal pathway that links *x* to *y*. Despite this complexity, I would suggest that, overall, the bureau-shaping thesis provides greater explanatory power

of the motivations of civil servants than the public service motivation theory. The table below summarises the analysis presented in this section.

<i>Theory</i> <i>Expectation</i>	Bureau-shaping	Public service motivation
Budget size	Increase above overall government spending.	Increase in line with overall government spending. Strong evidence in line with this observation.
Budget shape	Decreasing core to bureau budget. Contracting out of routine functions. Increase in policy work. Strong evidence in line with this expectation.	No specific expectations.
Change driver	Endogenous. Some evidence in line with this expectation.	Exogenous.

Table 17: Bureau-shaping versus PSM at ARB

5.8 General Teaching Council for England (GTCE)

The GTCE became operational on 1st September 2000 and gained its full regulatory powers from 1st April 2002. Unlike the ARB, the GTCE did not replace a previous independent regulator. Prior to the introduction of the GTCE, a central register of individuals holding a Post-Graduate Certificate in Education (PGCE) and thus eligible to teach in state maintained schools and a register of those barred from teaching was held by the Department for Education. On 1st April 2012, the GTCE closed its doors and some of its functions were transferred to successor bodies. Initially, the GTCE was funded directly by central government; from 1st April 2002, it was funded through an annual registration fee charged to registered teachers.

Over the period of its existence, the GTCE's budget increase in actual and real terms, and per registrant. Figure 15 sets out the change in expenditure in actual terms.

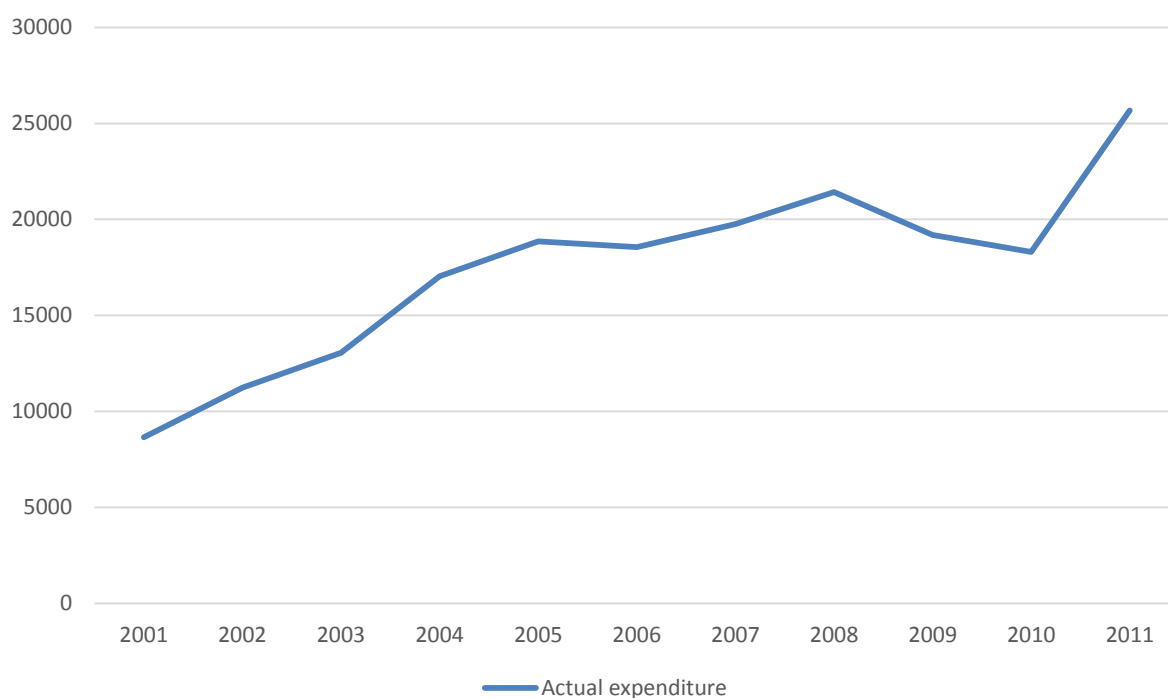


Figure 14: GTCE expenditure 2001 to 2012

The GTCE experienced both increases and decreases in its registrant numbers over the period 2001 until it closed its doors on 31st March 2012, as illustrated in the figure below.

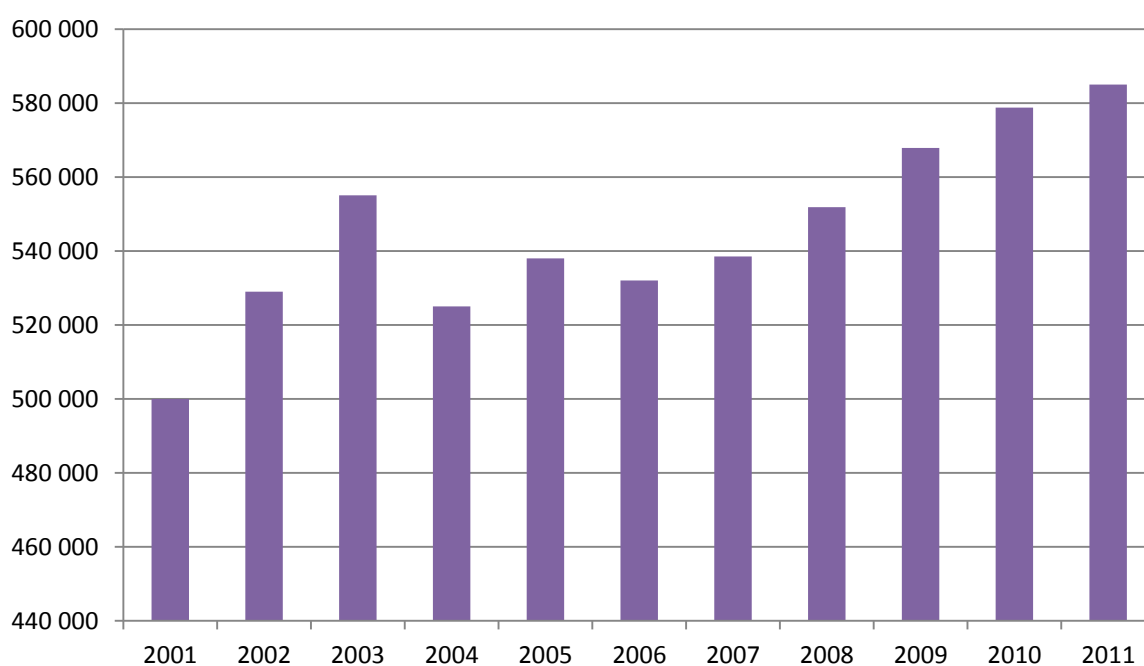


Figure 15: GTCE number of registrants at end of registration year

For most regulatory bodies, including the GTCE after 2003, income is generated entirely from registrants and annual income is therefore a function of the level of fees charged and the number of registrants. By the end of the 2004-5 financial year, the number of registrants had declined by over five per cent compared to the previous year, and did not fully recover until 2009-10. Given the legal requirement for qualified teachers in maintained schools to be registered with the GTCE, these changes would suggest either short term reduction in the number of employed qualified teachers or that a large number of teachers failed to register for a number of years³². So significant was this decline that the government introduced arrangements to meet the costs of teacher registration, though an annual salary top-up equivalent to the cost of registration.

Because of these fluctuations in number of registrants, presenting data on changes in the overall budget may be misleading. Figure 20 overleaf presents spend, per registrant, in each year between 2000 and 2012. The secondary axis provides the annual increase on previous year in percentage terms.

³² It is also feasible that these changes reflect large numbers of independent school teachers deciding not to register for a short period (such teachers were under no legal obligation to register, but could do so on a voluntary basis). However, such changes are unlikely, and GTCE data would suggest that the number of voluntary registrations increased over the whole period of its lifetime.

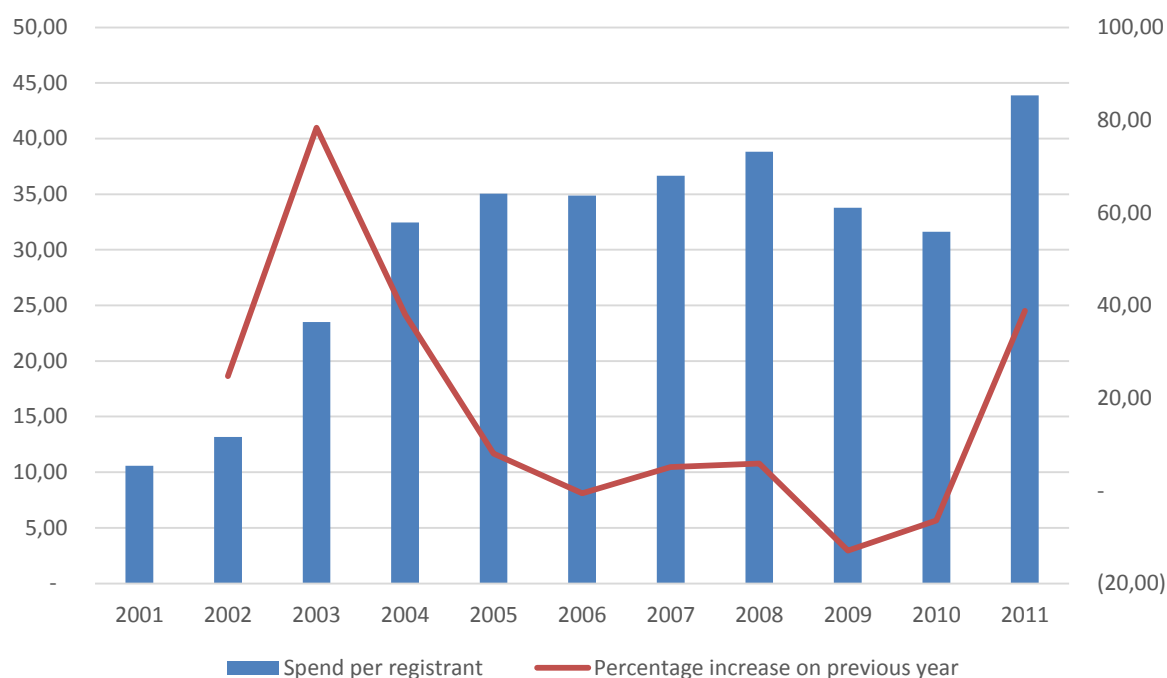


Figure 16: GTCE spend per registrant

5.8.1 Analysis

Budget size expectations

It is clear from the above that the budget of the GTCE increased over the period 2000 to 2012, both in global terms and per registrant. The increase per registrant is particularly interesting given that the number of registrants also increased and, at a broad level, is counter to the expectations of government, which assumes there ‘the larger the group regulated, the lower the individual fee (because of economies of scale)’ (DH, 2006; p5). But how do these changes compare to changes in overall government expenditure? If the changes are of a similar nature to that of overall government spending, they may simply reflect national political priorities rather than the bureau-shaping or budget maximizing behaviour of rational civil servants.

One problem with presenting a comparison of changes in government and GTCE spending is that, of the twelve years of data available for the GTCE, arguably a number of outliers. In its first year of operations (a seven month period was reported), the GTCE’s budget was just over £5m, increasing to just under £7m the

next year, then c£14m, then c£17m. Until 2003, the GTCE was entirely funded by government and thereafter by registrant fees. In the final year, around £10m was spent in closing down the organisation.

There is a further problem. Following the announcement in June 2010 by Michael Gove of the GTCE's closure, its overall budget declined in the next two years. But there were also significant changes within the budget, with several areas (notably conferences, publications and the Teacher Learning Academy) seeing significant reductions, and some areas (notably regulation and corporate support) seeing increases. As such, however presented, comparative data analysis could be challengeable as misleading. To illustrate this difficulty, I provide analysis of different ways of dealing with the data.

Spend per head comparison

Figure 18 below presents a comparison between government spending per head and GTCE spending per head over the lifetime of the GTCE. This suggests a different pattern of changes in spend per year, with the GTCE spend growing at a higher rate for a period during the mid-2000s. However, a quite different conclusion would be drawn if the first two years of the GTCE data (and the £10m spent on closing down the organisation in its final year) are removed. This analysis is provided in figure 19 overleaf.

Both of these graphs suggest that increases in the GTCE budget was higher than the whole government comparator, at least until the 2008/9 financial year. After this point, GTCE funding per head decreased.

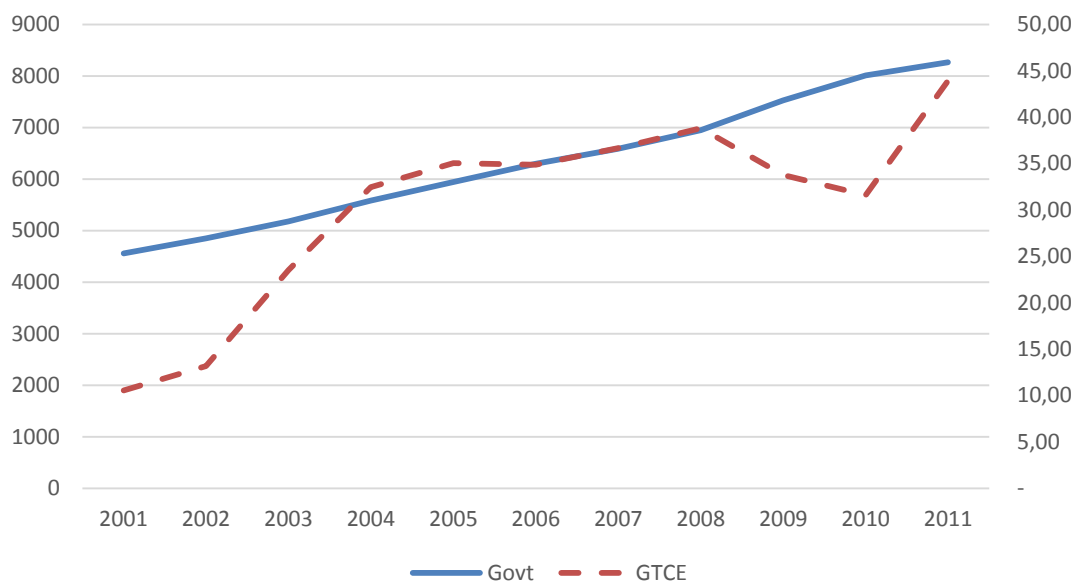


Figure 17: Spend per head comparison, UK government and GTCE (whole life, all spend)

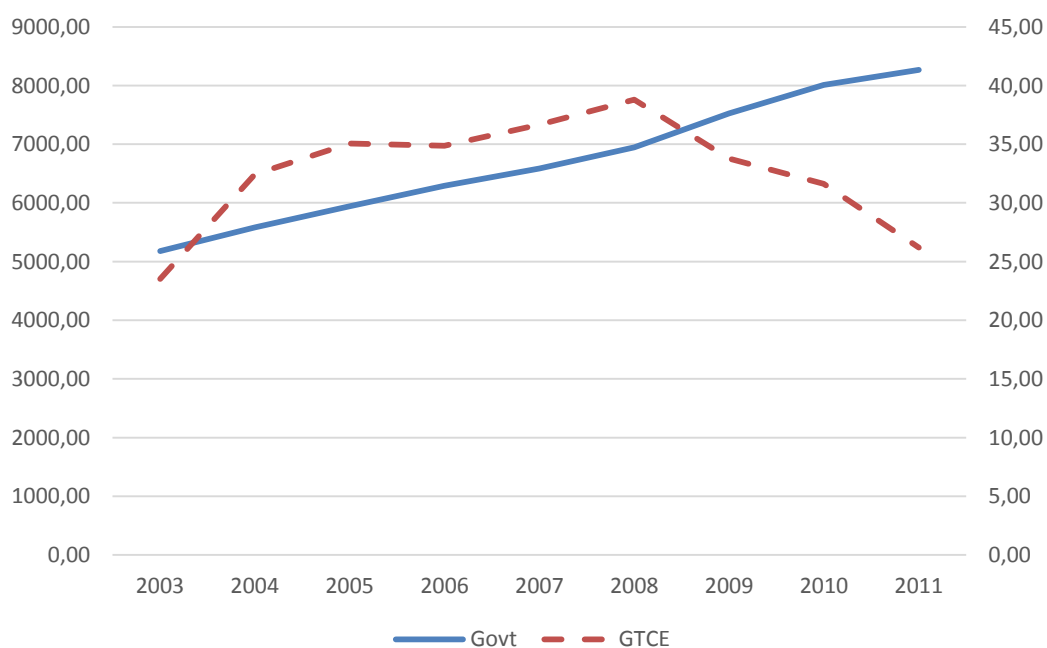


Figure 18: Spend per head comparison, UK government and GTCE (excluding government funding)

Spend per head relative to education funding

It could be argued that a comparison between GTCE funding and government funding for education is more appropriate than with overall government spending.

However, such a comparison provides a very similar picture as to the whole government spend, both for whole-life/all-spend comparator and excluding the government funding received by the GTCE in its first two and its final year.

Annual change per head comparison

A third possible way to analyse the data is to compare the level of annual growth, as a percentage on the previous year, between whole government and the GTCE. As with the ARB, the annual percentage change varies considerably for the GTCE does not provide any helpful analysis. I have therefore indexed these data, given the base year (2001 and 2003 respectively) as 100. Figures 20 and 21 illustrate this analysis.

Both of these graphs show a considerable period when year-on-year increases in spending at the GTCE were higher than year-on-year increases in whole government spending. As with the graphs illustrating actual spend per head, these graphs both show a significant change at the GTCE in 2008/9.

Why was 2008/9 such a pivotal year? The GTCE annual reports for 2007, 2008 and 2009 provide no insight from which to develop a plausible explanation for this change. And I would not suggest that the financial crisis is likely to provide much explanatory power. As I have mentioned, the GTCE received its funding from individual registrants, who in turn received a top-up on their annual salary to cover almost the entire cost of this fee. This top-up was funded by the GTCE's sponsoring department. Over the period in question, the number of individuals registered with the GTCE increased and its fee remained static. As such, for the period 2008 to 2011, the GTCE made some significant contributions to reserves (its income was higher than its expenditure).

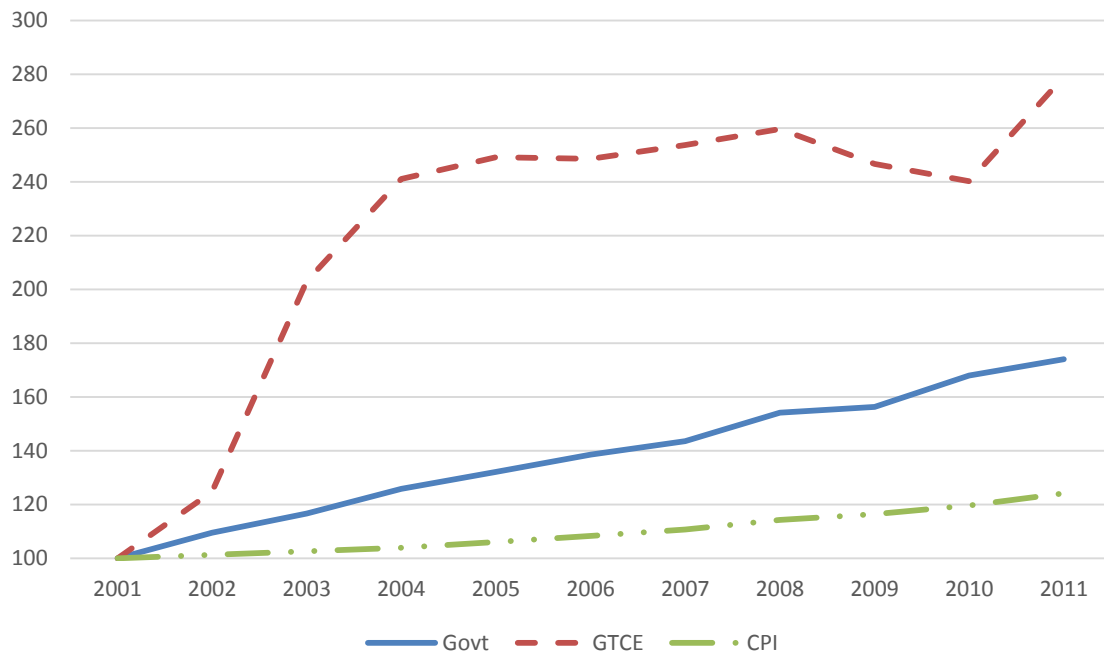


Figure 19: GTCE versus government spending per head indices (all income sources)(base year – 2003 = 100)

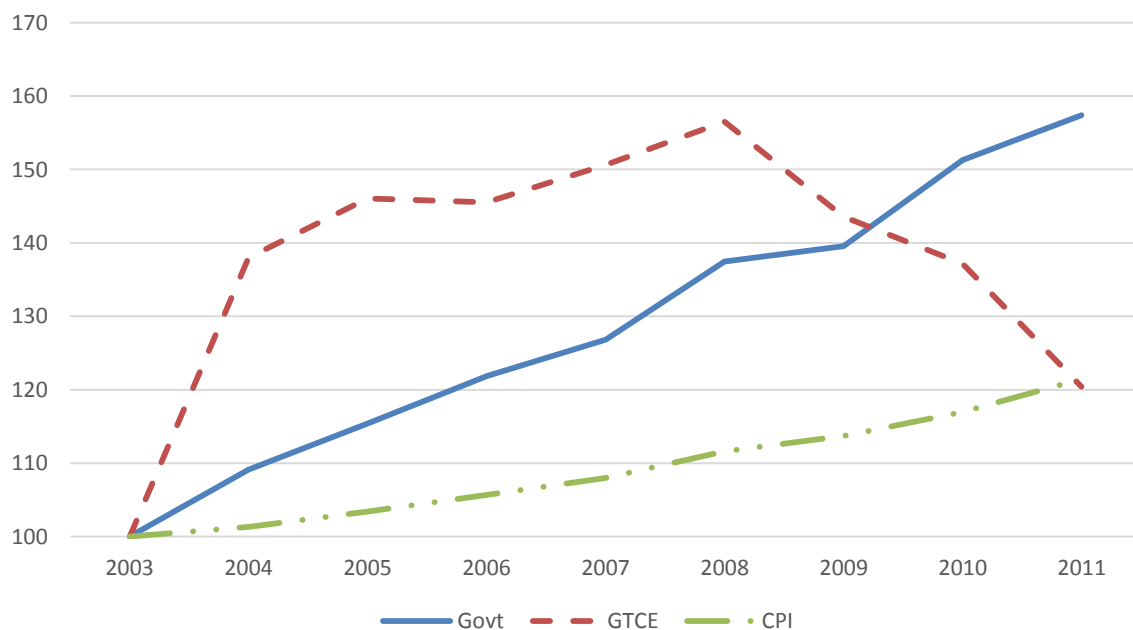


Figure 20: GTCE versus whole government spend per head indices (excluding govt funding to GTCE)(base year – 2003 = 100)

Given the picture painted across these different ways of comparing the GTCE budget with the whole of government spending, I would suggest that these changes are more in line with the expected observation arising from the bureau-shaping theory.

Budget shape expectations

The analysis presented in figure 22 suggests that the GTCE's bureau budget increased in line with the expectations arising from the bureau-shaping model. The changes in the core budget relative to the bureau budget are also in line with these expectations. In 2001, the core budget accounted for between forty and one hundred per cent of the GTCE's bureau budget (core minimum and core maximum measures) compared to 77 per cent and 39 per cent respectively in 2011. The average proportion of core maximum to bureau was 82.39 per cent with a standard deviation of 9.19 percentage points compared to the core minimum of 43.13 per cent and 4.85 per cent.

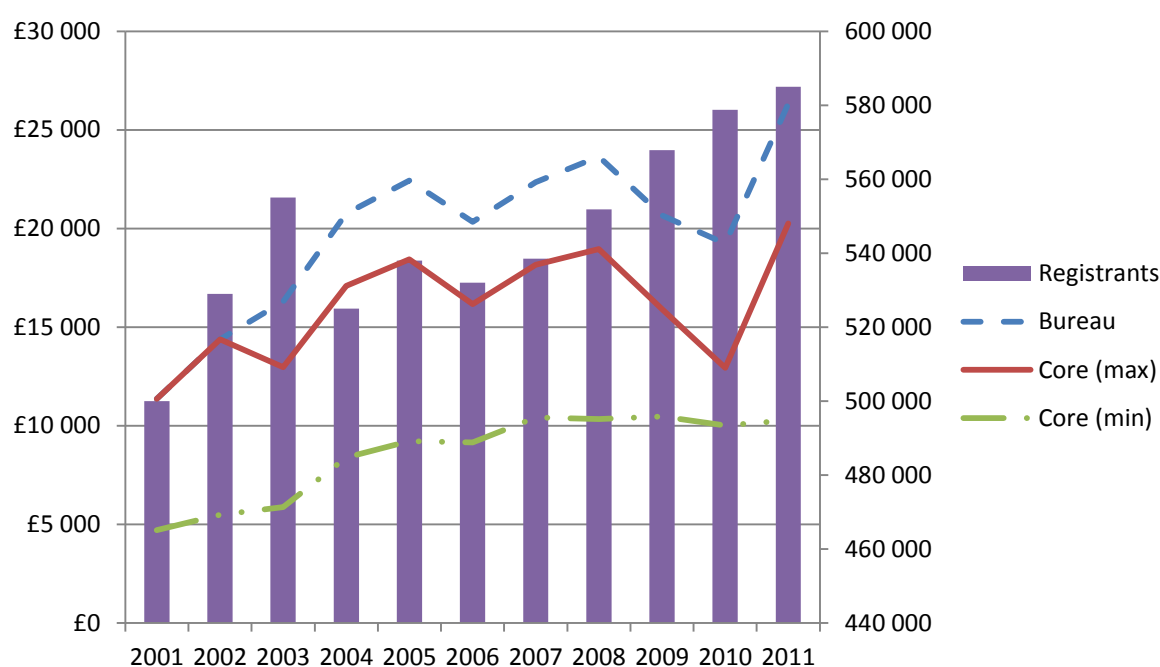


Figure 21: GTCE budget changes, 2001 to 2011 (April 2013 prices)

There was also a significant increase in the GTCE's bureau budget in its last year of operation, with an additional £10m added to the budget (over and above inflation). Staffing costs remained fairly static between these years.

Analysis of bureau and core budgets per registrant also suggest changes in line with the expectations of the bureau-shaping model. This analysis is illustrated in figure 23. Per registrant, the GTCE's bureau budget increased over the period of its lifetime, with a significant increase taking place at the end of the period where the GTCE was entirely government funded. In 2001, the GTCE bureau budget was £22.73 per registrant, compared to £45 in 2011-12 (average of £36.15; SD = £6.83).

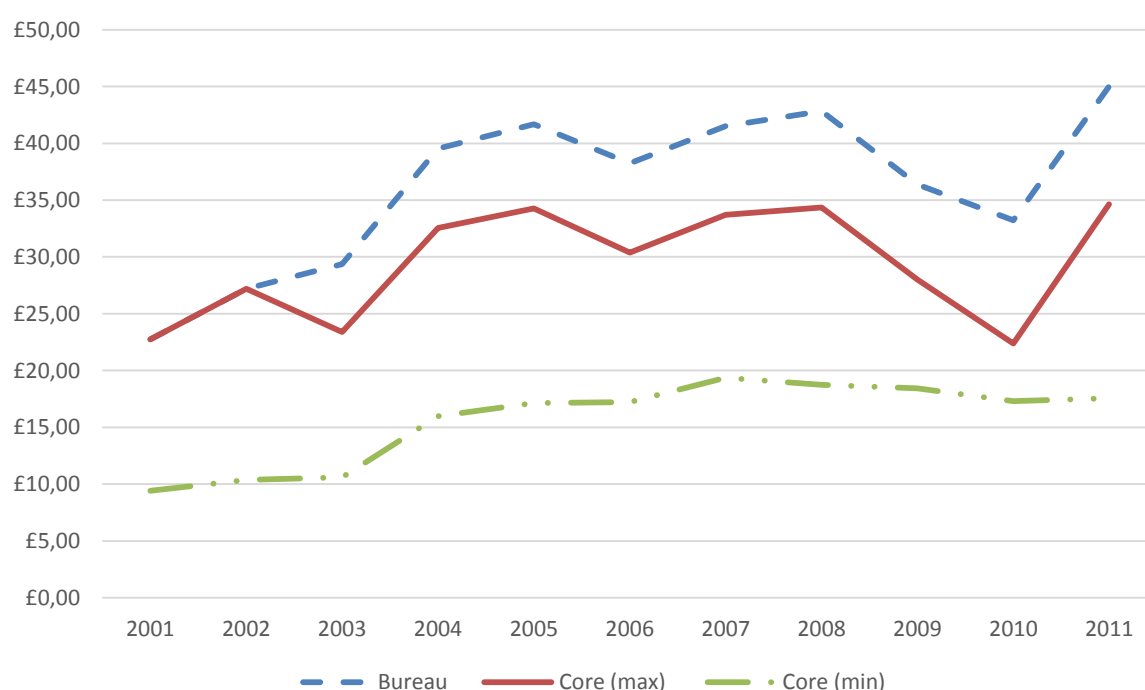


Figure 22: GTCE budget changes per registrant, 2001 to 2011 (April 2013 prices)

Changes in the GTCE's core budget require some explanation. The core (minimum) budget includes staffing costs and costs of offices (the GTCE had offices in London and Birmingham). Both of these core budget costs doubled over the lifetime of the GTCE. In terms of staffing costs, these were just over £4m in 2000 (April 2013 prices) compared to £8.7m in the final year of the GTCE's existence. The staffing budget peaked in 2007-8 at just over £9m (average of £7.3m, SD = £1.799m). Office

costs were £707k in 1999, rising to a peak of just over £1.5m in 2011-12 (average £1.79m, SD = £343k). In both cases, there is little year to year variation in expenditures and the core (minimum) budgets increases in a fairly uniform manner across the period.



Figure 23: Non-staff/office core budget items

It is in relation to the non-staff and non-office components of the GTCE's core budget that the largest changes can be observed. In figure 24 above, I illustrate changes in budgets (at April 2013 prices) in four areas: policy and research³³, registration³⁴, marketing³⁵ and the GTCE's Teacher Learning Academy.

Most professions regulators require that registrants keep up to date with their professional knowledge and skills post-qualification. These are generally known as Continuing Professional Development (CPD) requirements. The GTCE is perhaps unique in providing CPD activities as part of its overall service delivery through the

³³ The GTCE budgeted for policy and research in two areas, namely policy advice and research & information.

³⁴ Includes the costs of the GTCE's registration processes and the costs of collecting registration fees.

³⁵ The GTCE had an external relations budget, a conferences budget and a publications budget. The cost of the GTCE website is not included here.

Teacher Learning Academy (that is, it not only required teachers to undertake CPD but also provided courses by which they could meet this requirement). Throughout the lifetime of the GTCE, teacher CPD was high on the political agenda, with a range of funding and policy initiatives to promote teacher CPD (Lord et al, 2009). The Major Government introduced a Teacher Training Agency as part of the Education Act of 1994, which was relaunched as the Training and Development Agency for Schools (TDA) in 2005, when funding and responsibilities for CPD for teachers were devolved directly to schools. In 2001, a national strategy for CPD set out the government's commitment to increase the funding available through national initiatives and through money going direct to schools, such as through the Standards Fund (DfE, 2001).

Figures 25 and 26 overleaf present the GTCE expenditure on staffing, dealing with complaints and all other expenditure. Both as a proportion of overall spending and spend per registrant, over its lifetime the GTCE budget for dealing with complaints increased. During the first two years of its operation, the GTCE did not take any disciplinary action against registrants. In 2003-4, just under twelve per cent of its expenditure was spent dealing with complaints compared to 22.67 per cent at its peak in 2010 (average 12.8 per cent, SD = 6.46). Per registrant, expenditure in this area more than doubled, from £3.52 in 2003 to £7.53 in 2010-11, falling slightly in the GTCE's final year to £7.44 (average £4.69, SD = £2.48). These changes are in line with the expectations from the public service motivation model.

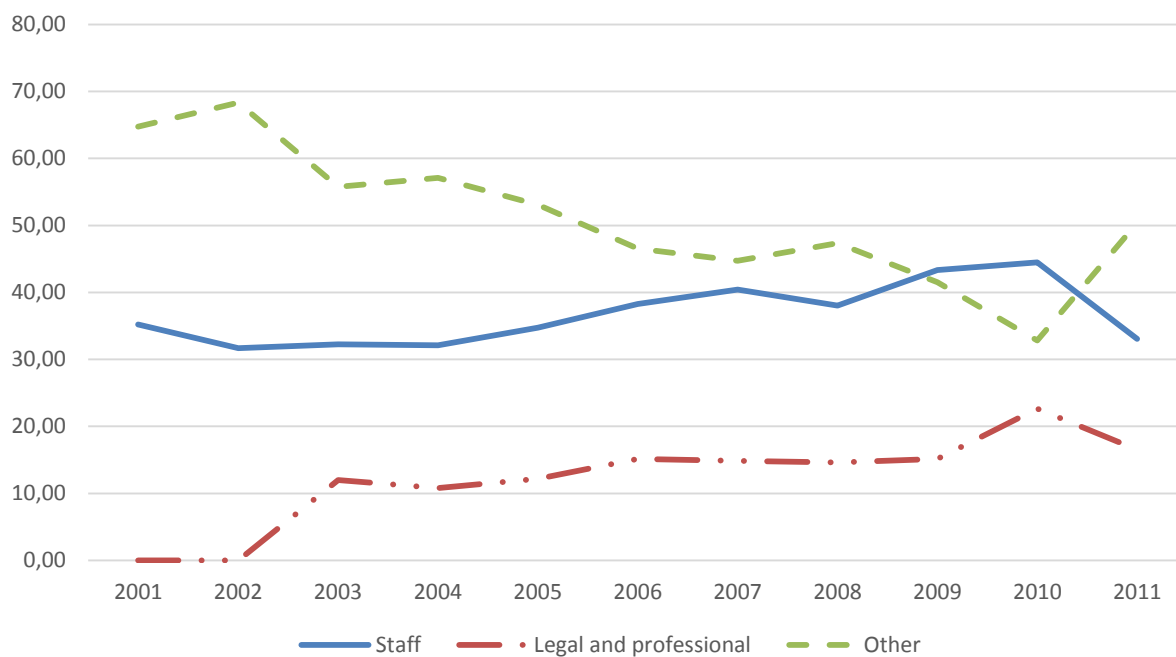


Figure 24: Changes in GTCE budget - percentage spent on staff, legal and other costs, 2001 to 2011 (April 2013 prices)

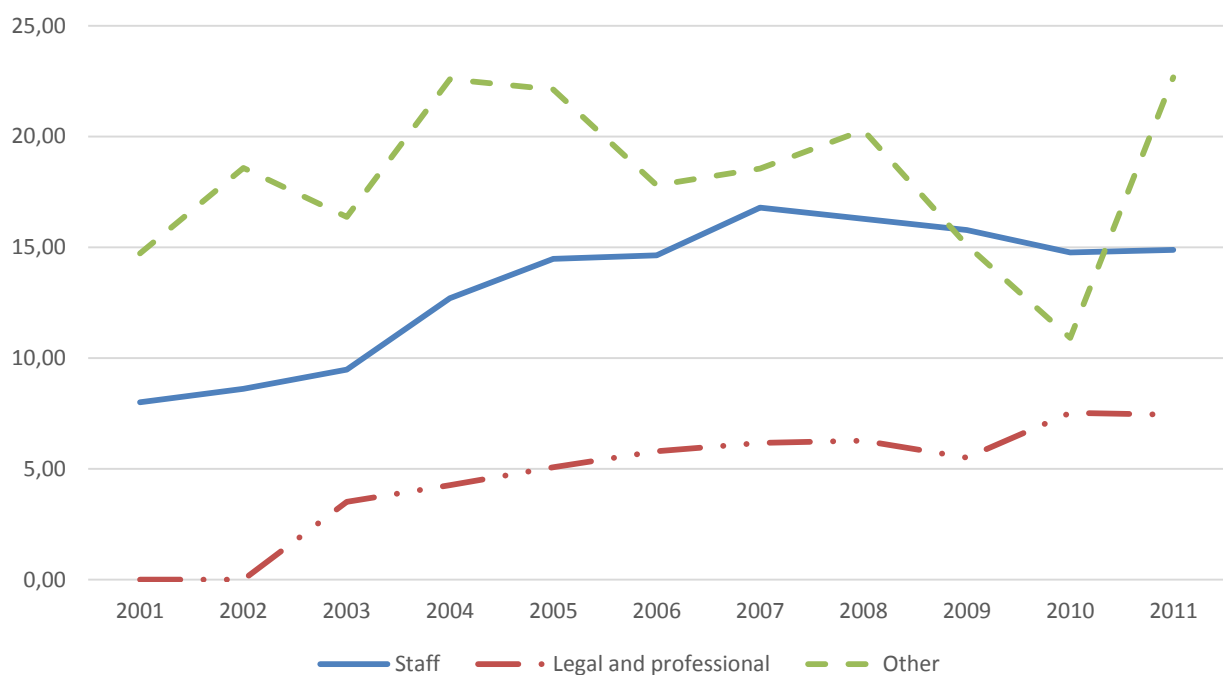


Figure 25: Changes in GTCE budget - spend on staff, legal and other costs per registrant, 2001 to 2011 (April 2013 prices)

GTCE expenditure on staffing also increased over its lifetime, both as a proportion of its total expenditure and per registrant. It also rose in real terms, from just over £4m in 2001 to a peak of just over £9m in 2007, falling slightly in the last three years of the GTCE's lifetime. As with the ARB, staffing costs seemed to have risen despite an increase in registrant numbers, which is counter to expectations of savings arising from economies of scale.

One interesting area of change is in relation to policy work. Dunleavy's model suggests that rational civil servants seek to further their work-related utility, and both he and his critics emphasize that attraction to policy work one important element of that utility. For me, agency termination proposals (such as the proposal to abolish the GTCE, made by Michael Gove in June 2010) present a unique opportunity to engage in policy work. This is particularly the case in relation to the GTCE, as the government made clear that teacher registration and professional standards work would, albeit it in a more limited and different form, continue after the abolition of the GTCE.

Why, then, did the budget for policy work fall after the period following the government's announcement? It is clear that policy work had been important to the GTCE. Indeed, in a review of the organisation conducted in 2005, the Audit Commission stated:

"...the council needs to assure itself that its policy development and research work is well-tailored to the current need. It has chosen to interpret its advice remit broadly, to encompass improvement of and for the GTCE and teaching profession generally, including developing policy on continuing professional development (CPD), entry to the profession, research-informed professional practice, e-learning, teacher retention, assessment, tackling inequality, new professional relationships, professional standards and working directly with teachers." (Audit Commission, 2005)

And in its 2007-8 annual report, the Chair of the GTCE stated that she was 'pleased to report that the GTC's policy advisory work has continued to grow in scope and influence' (GTCE, 2008). Indeed, of the c140 staff employed by the GTCE in 2004-5,

some 50 were employed in the 'chief executive's office and communications and policy functions' (Audit Commission, 2005; p14). So why the decrease in policy work following the abolition announcement? This decrease would seem to contradict the expectations of the bureau-shaping model, and be more in line with those of public service motivation. One plausible explanation is that the GTCE changed how it presented its policy work: alongside the reduction in its two policy activities³⁶ there was an increase, of around 25 per cent, in its 'Regulation' budget, though there does not seem to have been any substantive change in the number of disciplinary cases in this period.

Change driver expectations

My textual analysis of the business plans and annual reports of the GTCE, along with relevant documents and reports produce by the Department for Education and other relevant stakeholders, suggests that there were two key drivers of change for the GTCE: its birth and death; and its relationship with the profession and the teachers' unions.

Birth and death

The GTCE spent a great deal of time and resources on establishing itself, reviewing and revising its structure and operations and then working towards its abolition. Of course, the establishment of a new regulator takes time, resources and effort, and it is therefore reasonable that the first two years of the GTCE's existence were devoted to this task. The GTCE was largely based on the voluntary General Teaching Council (England and Wales) that had been established in 1990 as a 'GTC-in-waiting' (Willis, 2005; p129) in anticipation of being put on a statutory basis at some time in the future. And the GTCE also had the advantage of being able to adopt and adapt systems, structures, policies and procedures from the General Teaching Council of Scotland, the statutory registration and regulation body that had been established in 1965.

Having established itself, the GTCE almost immediately began a programme of 'modernising'. For example, in 2006 it commented:

³⁶ The GTCE included two policy areas in its annual reports, Evidence and Advice: Policy Advice and Evidence and Advice: Research and Information.

“The modernisation of GTC’s own structures and governance continues as does our commitment to efficiency savings and effective use of teachers’ registration fees”.

(GTCE, 2007)

The GTCE also seemed to have a perpetual cycle for reviewing and revising its standards. For example, the GTCE spent a considerable amount of time and resources in 2002 and 2003 on developing the relevant standards that would apply to individuals seeking to be registered and for maintaining their registration. These standards were subject to extensive consultation. Within the next four years, the standards were twice reviewed and then substantially amended. There were then again subject to extensive consultation. For example, in 2002 the GTCE stated that it had approved its *Code of Professional Values and Practice for Teachers*, stating that this ‘identifies the generic professional values and standards that underpin the work of teaching.’ It appears these generic values were reviewed and revised on an almost bi-annual basis, an unusually high level of review (in comparison, the General Medical Council has reviewed its equivalent to these standards twice since 1996 and the HCPC has reviewed theirs once since they were established in 2001).

One area in which the GTCE particularly struggled, and for which it received much criticism, was in relation to complaints against teachers. Initially, the fitness to practise work covering registered teachers continued to be undertaken by the relevant government department (at the time called the Department for Education and Skills, and from 2007 the Department for Children, Schools and Families). After some disagreement between the department, teachers’ unions and the GTCE, this responsibility transferred in 2003. The GTCE repeated commented about the scale, increasing level and rising cost of dealing with complaints. For example, in 2007 it commented:

“The GTC has stepped up the pace of its regulatory work, concluding 144 cases in 2006-07, compared with 75 in the previous year. The increased volume will help to shorten the interval between referral and conclusion of cases. Three quarters of the cases heard led to a reprimand, a restriction on the teacher’s practice or their removal from the register.” (GTCE, 2007)

It is worth putting this into context. The GTCE had a registrant population of between 500,000 and 580,000 registered teachers. The ARB, with its circa 30,000 registrants, concluded c90 cases in 2006-7. The HAC, with some 1500 registrants, concluded around the same number of cases as the GTCE with its c500,000 registrants. And per registrant, the HCPC (with some c200,000 registrants at this time) was dealing with over thirty times as many complaints as the GTCE. Of course, as with each of the other regulators considered in this research (and indeed, most professions regulators generally), the GTCE did see the number of complaints it received increase over its lifetime. But overall the number was very small, and the GTCE was criticised by a number of newspapers, politicians and teachers' unions about its management and handling of these complaints.

In other areas, the GTCE took a broad interpretation of its remit (Audit Commission, 2005; p7). For example, in 2005 the GTCE noted:

“The Government does not currently intend to require qualified teachers working in the new, independently managed academies to register with the GTC. The GTC has pursued this issue with successive schools ministers with the aim of securing a change of approach because it believes that registration is a vital safeguard of the public interest.” (GTCE, 2005)

Further commenting:

“Twelve national education organisations joined the GTC in pressing the case for all children in publicly funded schools to benefit from the protection offered by professional registration and by a professional standards and regulatory framework.”
(GTCE, 2005)

It also took an unusual step with regards to continuing professional development (CPD). Most professions regulators require their registrants to keep their professional knowledge up to date during the lifetime of their registration. There are

a variety of models used in terms of requirements (points-based³⁷, hours-based, open or some mixture) and in terms of compliance (submission of portfolios, self-declaration, member of professional body scheme, professional body audit, regulator audit, or some combination). However, the GTCE is possibly unique amongst regulators in that it established a unit which provided the courses and other materials that its registrants would need to meet the GTCE's CPD requirements. The GTCE stated:

“Following an independently evaluated four year pilot, Council agreed in July that the GTC Teacher Learning Academy should be taken to national scale in collaboration with local and national partners. The Teacher Learning Academy (TLA) is a unique national system for recognising teachers’ practice-based professional development.”
(GTCE, 2008)

Finally, the GTCE did not take very well the announcement in June 2010 by Michael Gove, then Secretary of State for Education, that it was going to be abolished. The GTCE immediately began a campaign against this policy proposal. In the House of Lords, the former Chair of the GTCE, Lord Puttnam, proposed several amendments to the Bill proposing the abolition. The GTCE commented:

“There continued to be considerable media interest in the proposal to abolish the GTCE and its possible implications, with our work focusing on explaining the risks to the public interest of abolishing teaching’s professional body. To this end, approximately 20 articles focusing on various aspects of abolition were published in various trade press, many authored by the GTCE Chair.” (GTCE, 2012)

The GTCE was unable to garner any substantive anti-termination coalition (O’Leary, 2015; p14). I discuss the potential reasons for this in the next section; it is clear from a number of comments made by teachers’ unions that the GTCE was not well liked and would not be missed. However, alongside this lone campaign for its continued existence, the GTCE also seems to have seized the termination proposals as an

³⁷ In such schemes, different training courses are accredited by the professional body or the regulator. Once accredited, each course carries a given number of points. Over the CPD period – typically one or two years – the registrant must undertake sufficient accredited CPD activity to achieve a minimum level of points).

opportunity to further review and work on its structure, organisation and internal procedures. In its final annual report, the GTCE reflected on its closure programme, commenting:

“The VtF programme was delivered through a portfolio of 10 projects covering the legacy, transfer, transition and closure of the activities and functions of the public corporation. Each project was led by a project executive, who was a member of the Senior Management Team, and was supported by a project manager. There was a clear line of sight from each project’s activities to the eventual outcomes of the programme. Each project tracked risks, issues and progress on a weekly basis.”

(GTCE, 2012)

Relationship with the profession and teachers’ unions

In a commentary in the Times Educational Supplement in July 2001, Martin Scotchmer, a teacher who was elected to serve as one of the first members of the GTCE Council, commented:

“The advice of (of the National Union of Teachers) attempts to continue the divisions within the profession. We should be at the dawn of a bright new era in teaching with the formation of our own governing body. We should be supporting it through its infancy, not trying to beat it to death in some self-serving power-struggle.” (quoted in

Willis, 2005; p135)

Perhaps more a more understated conclusion was drawn by the Audit Commission following its review of the GTCE in 2005:

“Stakeholder perceptions and relationships are the main challenge and area for improvement for the council.” (Audit Commission, 2005)

Throughout its twelve year life, the antipathy and often outright hostility of some teachers and many of the teachers’ unions towards the GTCE is palpable. In a 2001 NOP survey commissioned by the GTCE, over half of c1000 teacher respondents stated that the GTCE would do nothing for them (Willis, 2005; p131) and the Audit Commission commented in 2005 that ‘the council is aware that it has not yet made

the impact it aspires to with key stakeholders, including government and the majority of the teaching workforce.’ (Audit Commission 2005). These difficulties were apparent when the necessary legislation to establish the GTCE was making its way through Parliament, and the complex and competitive landscape of teachers’ unions and other stakeholders was reflected in the large size of the board of the GTCE, and the complexity of arrangements for appointing board members:

“The results of the election for 25 teacher Members of Council to serve on Council from September 2004 were announced on 6 April 2004. In parallel with the election process, the 15 education organisations and six teacher associations represented on Council were asked to select or re-nominate Members. Twenty seven new Members joined the Council as a result of the election or nomination process, with one further new Member joining through the public appointments process.” (GTCE, 2005)

This governance structure caused ongoing problems for the GTCE, and at least three separate external reviews of the organisation (by the Audit Commission in 2005, by the CHRE in 2010 and from its internal auditors) recommended changes to bring the GTCE more in line with other professions regulators. The Audit Commission questioned the large size of the board (the largest of any of the GTCs in the UK), the lack of public/service user representation and the over-representation of the teachers’ unions (Audit Commission, 2005). The Audit Commission recommended that ‘the council should reconsider the size and balance of its own representation before its next elections.’ The GTCE discussed this, but could not gain agreement from the relevant parties. In 2008 the GTCE’s internal auditors, RSM Robson Rhodes, had recommended the establishment of an executive committee of the board, to help streamline its decision-making processes. Such arrangements had been considered on a number of occasions by the GTCE board, but each time had been blocked by one or more of the teachers’ unions. Such was the antipathy and outright hostility of the teachers’ unions that, on the announcement of the GTCE’s abolition, the general secretary of one of the teachers’ unions stated that the proposal would be welcomed by teachers and that ‘few would notice and even less (sic) would care’ about the abolition.

Exogenous or endogenous drivers?

What does this mean in relation to the exogenous versus endogenous expectations of public service motivation and bureau-shaping theories respectively? I would suggest that the GTCE took a very broad interpretation of its remit with respect to policy, policy networks and communication work and a quite strict interpretation of its more routine registration and regulation remit. This would seem consistent with the bureau-shaping expectations. And it seems to have completely misunderstood its role as a regulator, focusing on a rather outdated structure and modus operandi and failed to appreciate the wider changes in the meta-regulatory regime I identified in section 1.7. To some extent, it is difficult to blame the GTCE alone for this – its board composition was determined by government. But even given this, the GTCE seems to have focused much resource on the kind of issues and areas that are consistent with the work-related utilities specified by Patrick Dunleavy, and done so as a result of internal, collective action by its staff.

The overly inward focus of the GTCE is represented in the count of exogenous versus endogenous drivers of change, set out in figure 27. This suggests that the expectation arising from the bureau-shaping model is a more convincing explanation of the actions of civil servants at the GTCE.

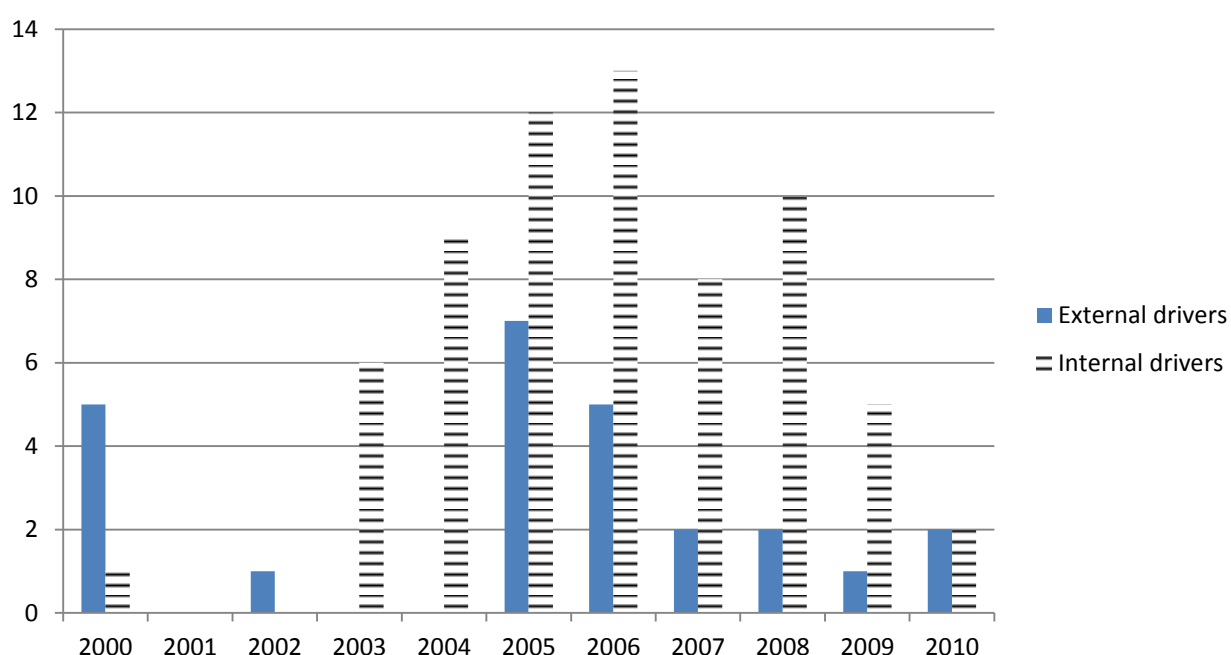


Figure 26: Count of external and internal drivers of change

5.8.2 Conclusions

Compared to the mixed picture presented in the analysis of the ARB, my analysis of the actions of the GTCE against the expectations I set out for both the public service motivation and bureau-shaping theories is more straightforward. Overall, I would argue that the GTCE provides some good evidence in line with the expectations of the bureau-shaping model. Table 19 below summarizes this analysis against each of the stated expectations.

<i>Theory</i> Expectation	Bureau-shaping	Public service motivation
Budget size	Increase above overall government spending. Some evidence in line with this observation.	Increase in line with overall government spending.
Budget shape	Decreasing core to bureau budget. Contracting out of routine functions. Increase in policy work. Strong evidence in line with this expectation.	No specific expectations.
Change driver	Endogenous. Some evidence in line with this expectation.	Exogenous.

Table 18: Bureau-shaping versus PSM at GTCE

5.9 Health and Care Professions Council (HCPC)³⁸

The HCPC is a multi-profession regulator that began operations on 17th April 2002 (HCPC, 2003). It currently regulates sixteen different professions³⁹; twelve of these were transferred from a previous regulator, the Council for Professions

³⁸ The HCPC was established in 2002 and was known as the Health Professions Council until 2002. For ease of reference, I refer to the organisation as the HCPC throughout.

³⁹ At the outset of this research, the HCPC regulated fourteen professions: arts therapists, biomedical scientists, chiropodists / podiatrists, clinical scientists, dietitians, hearing aid dispensers, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, prosthetists / orthotists, radiographers, and speech and language therapists. During the period of my research, the number of HCPC regulated professions grew to sixteen (practitioner psychologists and social workers in England).

Supplementary to Medicine (CPSM)⁴⁰ at its launch, one (Hearing Aid Dispensers) was transferred from the HAC in April, 2010 and one (Social Workers) was transferred from the General Social Care Council in August 2012. Three other professions have been covered by statutory regulation since the HCPC's creation⁴¹; indeed, both the previous Labour Government (HM Government, 2007) and the current Coalition Government (HM Government, 2011) have made policy statements that the HCPC will be the 'regulator of choice' for any future regulation of health, social care and related professions.

The HCPC is included here as one of the two regulators over the past decade of hearing aid dispensers. The HCPC budget data and annual reports provide income on registered profession, but do not include such detail in relation to expenditure. As such, the analysis presented here covers the whole of the HCPC and not just expenditure related to the regulation of hearing aid dispensers. Since the creation of the HCPC in 2002, there has been increases year on year in its total budget, from just under £7m in 2002 to just over £20m in 2012.

As with each of the regulators included in this analysis, the HCPC has experienced an increase in the number of people on its registers. However, this can be explained by both an increase in registrations and because (unlike the other regulators in this analysis) an increase in the number of professions regulated. In 2010, hearing aid dispensers ceased to be regulated by the HAC and this function was transferred to the HCPC. From October 2010, the HCPC began to regulate practitioner psychologists and from August 2012, the HCPC took responsibility for regulating social workers when the General Social Care Council was abolished. As a result of these changes, the number of people registered with the HCPC has more than doubled since its creation, rising from 144,141 in 2002 to 321,735 in February 2014. This is by far the largest increase experienced by any of the regulators covered by this analysis and is illustrated in figure 28 overleaf.

⁴⁰ The CPSM was a statutory regulator of twelve non-medical healthcare professions established by the Professions Supplementary to Medicine Act 1960. The CPSM consisted of twelve separate boards (one for each profession) with a separate register, standards and some limited disciplinary functions. The requirement to register with the CPSM only covered those professionals working within the National Health Service. Although it was replaced by the HCPC, it was materially different in terms of form, function and scope from the HCPC.

⁴¹ Operating department practitioners, paramedics and practitioner psychologists.

Despite this significant increase in the size of the registrant population, spend per registrant has increased steadily over the period, rising in every year between 2002 (£47.18) and 2011 (£77.50). In 2012, the number of registrants grew by a third on the previous year and the average spend per registrant decreased to (£64.37).

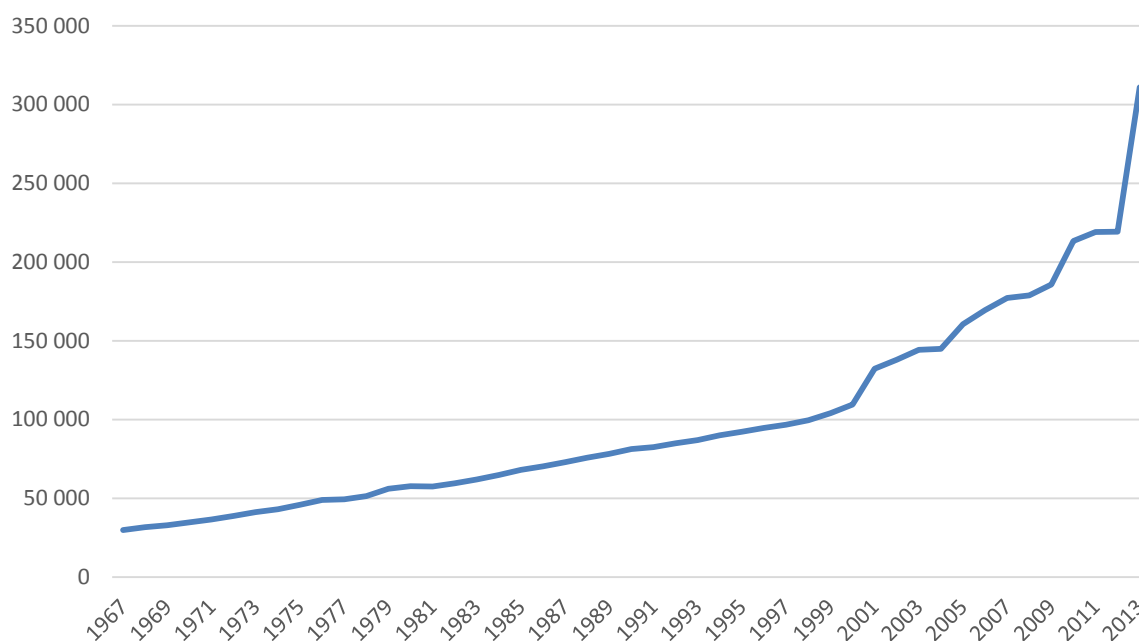


Figure 27: Number of registrants, HCPC and CPSM

5.9.1 Analysis

Budget size expectations

It is clear from the above that the budget of the HCPC increased over the period 2000 to 2012, both in global terms and per registrant. As with the ARB and the GTCE, the increase per registrant is counter-intuitive because of the assumed economies of scale. But how do these changes compare to changes in overall government expenditure? Figure 29 provides a comparison of HCPC spend per head and government spend per head over the same period, indexed to the base year of 2002. This suggests that changes in the overall size of the HCPC budget were in line with changes in government spending, as expected by PSM.

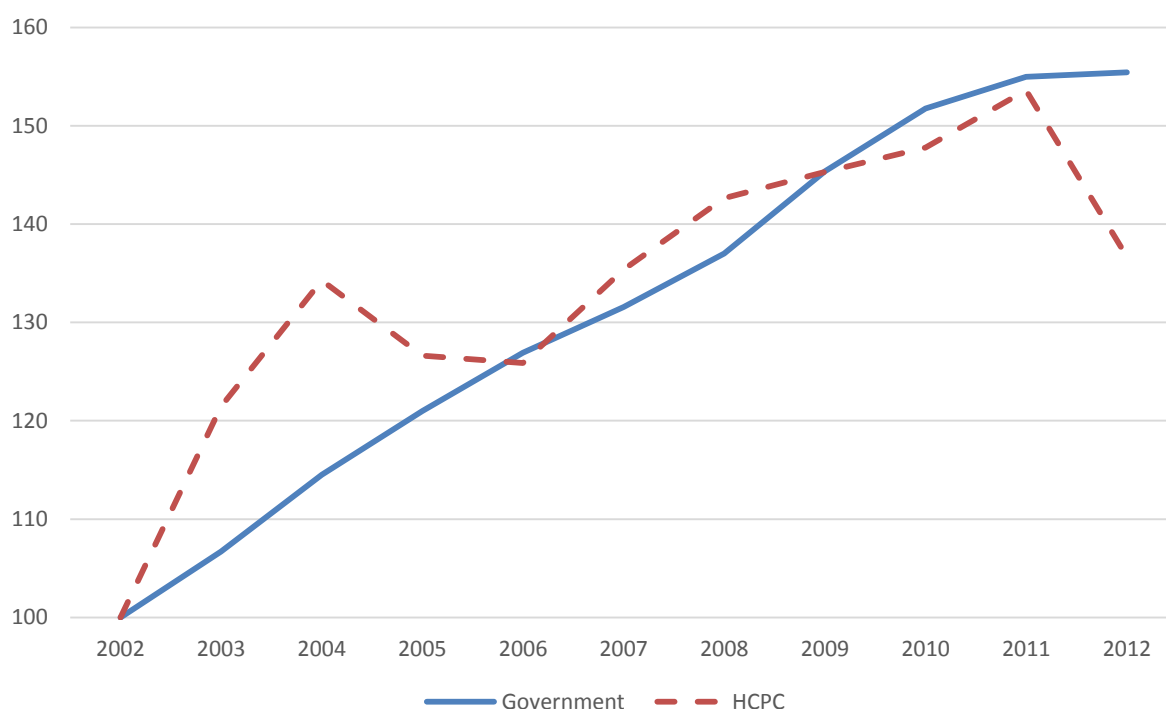


Figure 28: Per capita change in government versus HCPC spend, indexed (base year 2002)

Budget shape expectations

In total terms, the HCPC's bureau budget increased over the period, and the average change per annum was £1.1m (SD = £929k), and only one decrease was experienced between 2004-5 and 2005-6. The proportion of core to bureau budget also changed. Over the period, the proportion of core (max) to bureau budget declined from 83.01 per cent in 2002-3 to 59.81 per cent in 2012-13, an average decrease of -2.58 percentage points per annum (SD = 4.84) (core minimum average decrease was -1.38 percentage points, SD = 4.57). Figure 30 below illustrates the change in core and bureau budget over the period.

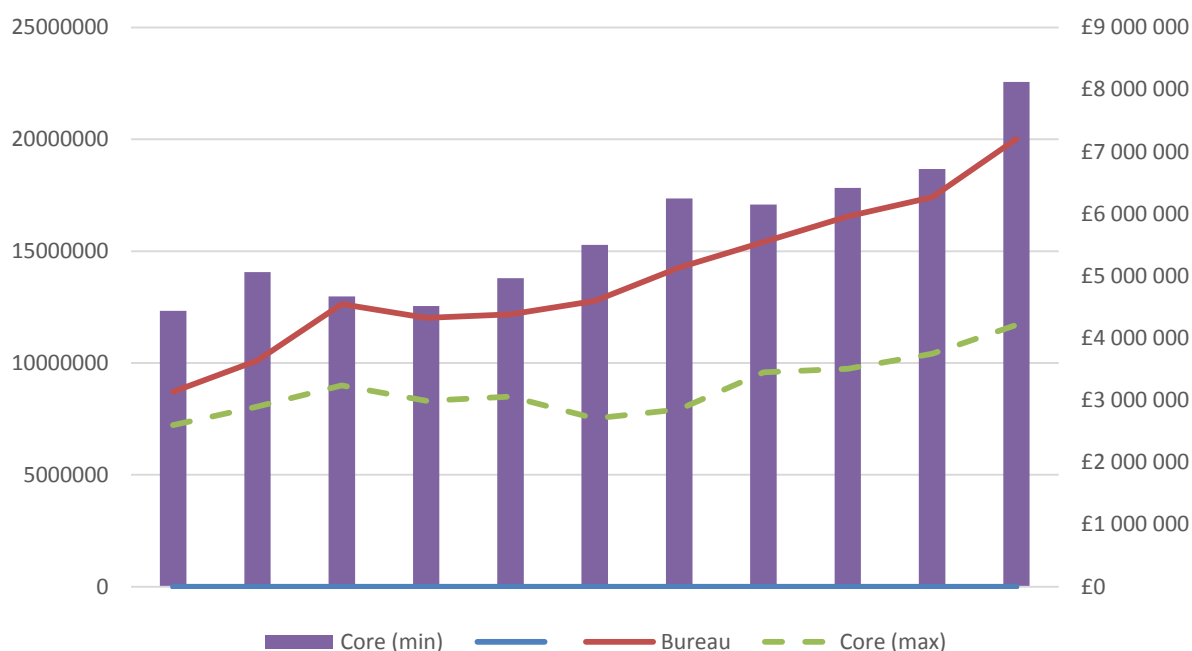


Figure 29: HCPC budgets, 2002 to 2013

In total terms the HCPC budget size and structure changed as expected by the bureau-shaping model. Over the period from 2002 to March 2013, the HCPC's expenditure on dealing with complaints increased in real terms, as a proportion of its overall spend and in terms of spend per registrant. During the period, spend increased almost seven-fold, from just over £1.1m in 2002-3 to almost £7.5m in 2012-13 (average annual increase was £634,326, SD = £395,266). As a proportion of overall spending, it increased from just under thirteen per cent to almost forty per cent (average annual increase was 2.45 percentage points with a standard deviation of 2.79). Spend per registrant increased three-fold over the period, from £7.72 to just under £24 (average annual increase was £1.63, SD = £3.12). Spending on staff also increased over the period, although not to the extent identified for the previous two regulators. In terms of the total budget spent on staff, this has increased in real terms each year from just over £2.6m in 2002 to just under £7.5m in 2012-13 (April 2013 prices).

What explains this increase in complaints? As I have previously noted, almost all professions regulators have reported increases in the number of complaints, both in actual terms and in terms of the average number of complaints per registrant. Few attempts have been made to provide a convincing explanation of these changes, and

there are a number of potential causes. These potential include wider changes in society, with people more willing to complain about poor service, the increasing litigious and/or health and safety orientated culture (many, and an increasing proportion, of complaints to the HCPC are referrals from employer NHS trusts, and plausibly this is to reduce any possible litigation or claim for compensation) through to changes in the burden of proof, changes that have made it easier to complain and advertising campaigns by individual regulators. A report by the HCPC, for example, makes this comment about the arrangements for making a complaint under its ancestor, the Council for Professions Supplementary to Medicine (CPSM):

“If somebody was a member of the public, it was much more difficult to make an allegation. They could only submit an allegation by making a ‘statutory declaration’ in the presence of a solicitor and sending it to the Registrar setting out their case.”
(HCPC, 2012)

However, providing a more robust explanation of the causes of this increase in complaints would be a substantive piece of research in its own right, but that all professions regulators have experienced such increases, this for me suggests that exogenous causes are much more likely to be significant.

Change driver expectations

The HCPC is unique as a UK professions regulator in that it regulates a number of professions, which, although all working in health and social care, are very different in terms of their education, philosophy of health and social care, working practices, sector of work and whether they work directly with service users. It has also been identified as the ‘regulator of choice’ by both the 1997-2010 Labour government and the 2010-2015 Conservative-Liberal Democrat coalition government. Its approach to regulation is also reflected in the Professional Standards Authority’s criteria that voluntary registers must meet to be accredited. My textual analysis suggests that there has been two key drivers of changes at the HCPC; the increase in complaints (discussed in the previous section) and the increase in registered population (both the number of professions and the number of people in those professions).

The scale of this increase is clear from the data provided above and also from the comment made by the Chief Executive in the 2012 annual report:

“This year the Health Professions Council celebrated its ten year anniversary. Since the shadow Council was formed in 2002, we have regulated three further professions, the Register has grown by 59 per cent, and we now approve more than 600 education and training programmes throughout the UK.” (HCPC, 2012)

The increase in the number of people in each profession is interesting because it seems to have occurred despite further entry restrictions placed on individuals seeking registration. As made clear in research published by the HCPC in 2012:

“In the early days, their qualifications were not at degree level. Some were considerably below degree level. For example, the early form of the Diploma of the College of Radiographers was only two years long. However, by the late 1980s this was no longer true and by the mid-1990s, almost all of the profession were graduate entry, and some were developing Masters degrees within their own professional expertise and a few obtaining doctorates.”

I will discuss this in much greater detail in the next chapter, because it runs counter to a key expectation of private interest theories that regulation furthers the interests of the profession by raising the entry requirements and closing the market. At least for the HCPC, the evidence would suggest that raising entry requirements has occurred alongside increased number of entrants, though this is in absolute terms and not relative to changes in demand for these services.

But the HCPC has also experienced an increase in the number of professions it regulates. One of the changes in the regulatory regime arising from the establishment of the HCPC was that it was given the power to make recommendations to government on which professions should in future be regulated. This is a power which the Law Commission recently recommended be repealed (Law Commission, 2014) but which, at least initially, the HCPC seems to have committed considerable resources to using. For example, in its 2004 annual report, it commented that:

“...we had met with representatives from over 30 professions, all of whom were interested in being regulated by HPC. Such interest in being part of the HPC is a positive endorsement of our work, but more importantly a strong message of support for the benefits to a profession of being independently regulated.” (HCPC, 2004)

The HCPC made recommendations with respect to the future regulation of at least six different professions, and in 2005 reported:

“The ODPs were the first profession to knock on our door when the legislation allowing us to recommend professions for regulation came into being on July 9th 2003. After a successful consultation by the Department of Health they came on board officially in October 2004.” (HPC 2005)

Indeed, the HCPC established a specific process by which professions could apply for the HCPC to make a recommendation to government on their regulation. This was highly procedural, and was focused on whether professions were ready for regulation (that is, did they have voluntary register, were there standards in place, was there a defined body of knowledge underpinning the profession) and not on whether regulation was necessary because of the type of public interest justifications I set out in chapter 2. This seems to have been recognised by its sponsoring department, the Department of Health. In its report *Extending Professional Regulation*, the department noted:

“Until now, discussions about these unregulated groups of workers had tended to refer to them as “aspirant” groups. This report avoids the use of this term, originally introduced by the HPC for the purpose of indicating when applications for regulation were made to it by groups seeking recognition as “professions”, as we felt it has been used by some to place the extension of professional regulation in the context of the needs and aspirations of professional or occupational groups, rather than in the perspective of the systems and safeguards needed by patients, the public, employers and commissioners to assure safety and quality of care.” (DH, 2009)

By the time the Department of Health published this report, and after ministers failed to accept several of the HCPC’s recommendations, this initial flurry of activity turned

to attention to implementing government proposals about future professions regulation rather than proposing new professions for regulation. This is reflected in the count of external versus internal drivers presented in figure 31.

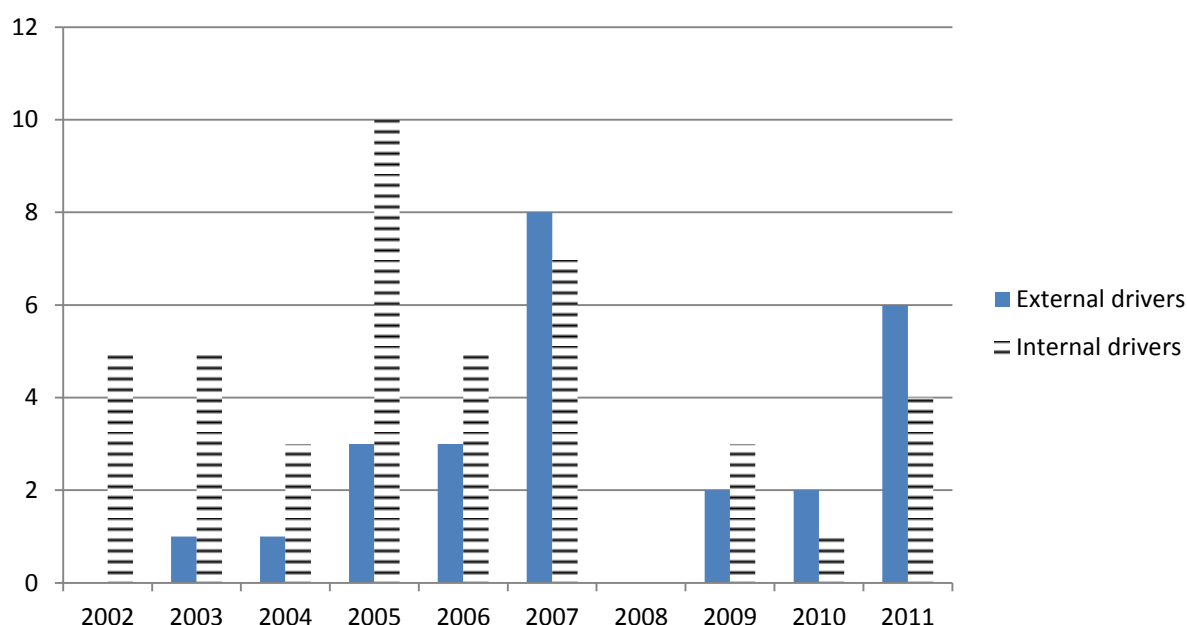


Figure 30: Count of external versus internal drivers

This analysis seems to suggest that endogenous drivers (that is, consistent with bureau-shaping expectations) were more important in the first half of the period and exogenous drivers (that is, more consistent with public service motivation expectations) in the second half. But it also clear that activities at the HCPC were driven by a mixture of exogenous and endogenous drivers, and that external triggers were followed by much internal change and development.

5.9.2 Conclusions

As with the two previous regulators, this analysis has provide evidence in line with the both bureau-shaping and public service motivation expectations. Table 20 overleaf provides a summary of the analysis of the HCPC. Overall, on balance, I would suggest that the expectations arising from the bureau-shaping model seem to provide greater explanatory power for the actions of civil servants working at the HCPC.

<i>Theory</i> <i>Expectation</i>	Bureau-shaping	Public service motivation
Budget size	Increase above overall government spending.	Increase in line with overall government spending. Some evidence in line with this observation.
Budget shape	Decreasing core to bureau budget. Contracting out of routine functions. Increase in policy work. Strong evidence in line with this expectation.	No specific expectations.
Change driver	Endogenous. Some evidence in line with this expectation.	Exogenous.

Table 19: Bureau-shaping versus PSM at the HCPC

As with the other regulators considered here and as I set out in more detail in section 5.10 below, there are a number of important caveats and limitations inherent to this analysis and my interpretations and conclusions are open to challenge.

5.10 Hearing Aid Council (HAC)

Over the decade before its abolition, the HAC's total expenditure increased in actual and real terms and per registrant. Figure 32 below illustrates the change in actual and real terms from January 1999 to March 2010. The peak in expenditure in 2003 relates to the costs of a single, but large and complex, disciplinary case (HAC, 2004). Given the small size of the organisation in terms of registrant population and budget, and the unit cost of dealing with a complaint (large, complex cases can cost many thousands in legal costs), fluctuations in the number of cases prosecuted had significant effects on the HAC's budget over its lifetime.

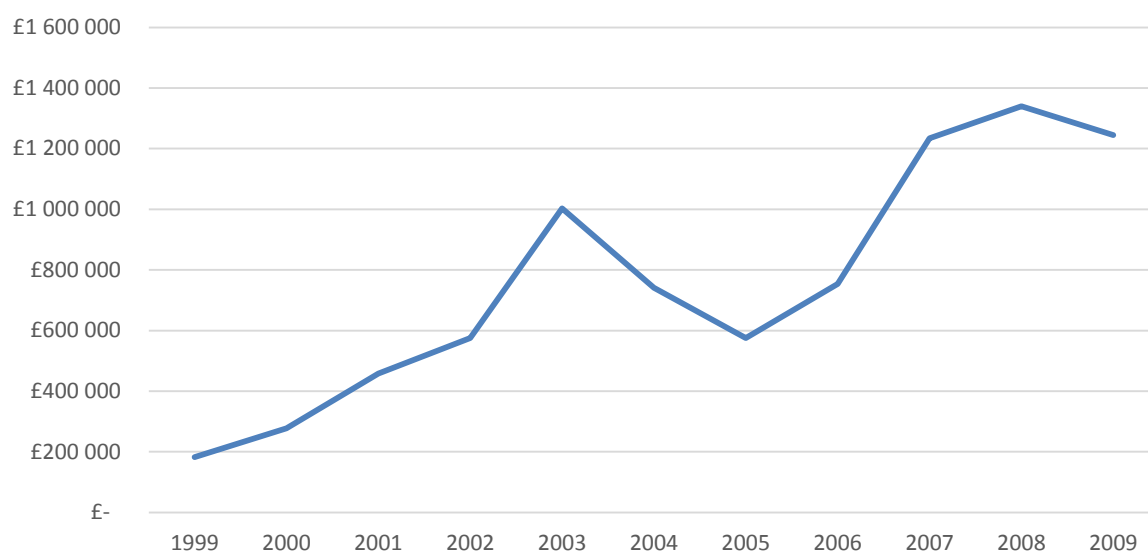


Figure 31: HAC expenditure, 1999 to 2010

Over the period, the annual retention fee charged to registrants increased considerable, from £135 in 1999 to £695 in 2009-10. This is the most substantive increase in fees for any of the regulators covered by this research, and represents a four-fold increase, in real terms, in just over a decade.

The change in number of disciplinary hearings held by the HAC also provides some illustration of the increase in the number of complaints received by professions regulators over the past twenty five years⁴². Figure 33 overleaf illustrates this point.

⁴² The number of disciplinary hearings held is not a direct measure of the number of complaints received; some complaints may not have been referred to a disciplinary hearing, and some hearings may involve more than one complaint. However, it does provide a proxy measure and illustrate the rapid and recent increase in disciplinary activity undertaken by professions regulators.

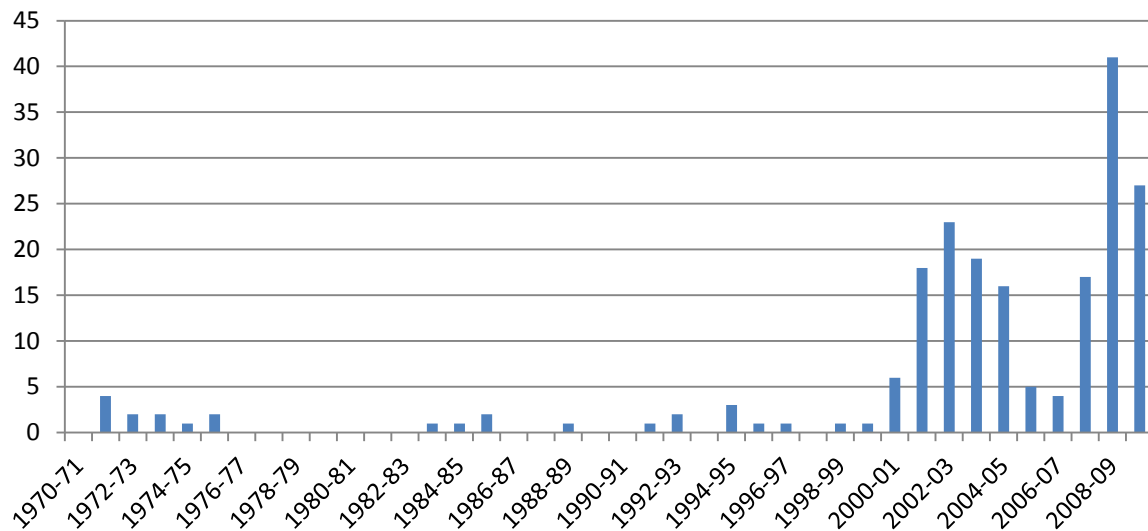


Figure 32: No. of disciplinary hearings held, 1970 to 2010 (O'Leary, 2010; p49)

The number of registrants also increased over the period 1999 to 2010. The HAC was an unusual professions regulator in that it registered employers of hearing aid dispensers, as well as dispensers themselves. The figure overleaf presents data on the total number of registrants (employers and individual dispensers) during the period. Published data do not provide a consistent breakdown between the two registrant types, but typically between fifteen and twenty percent of the total registrants given would be represent employer registrations.

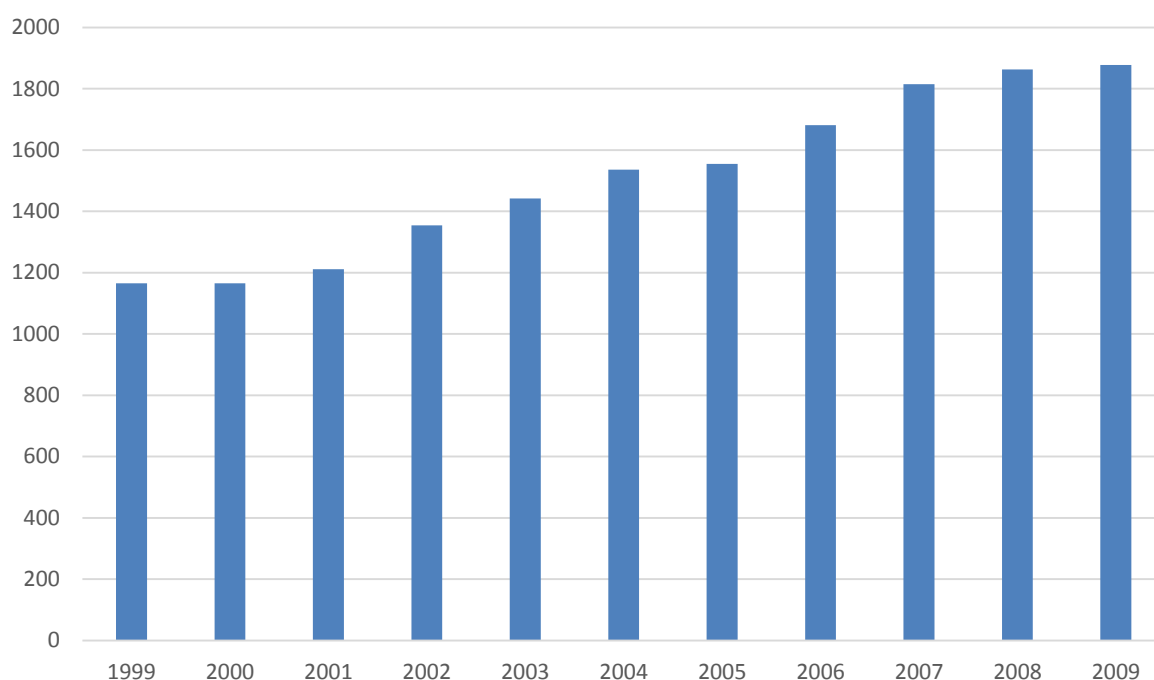


Figure 33: Total HAC registrant numbers by year, 1999 to 2010

Budget size expectations

The HAC's budget increased over the period, from just over £250k in 1999 to nearly £1.375m in 2009-10 (average annual increase of £112,286, SD = £271,592). It also increased from £215.46 per registrant to a peak of £793.96 per registrant in 2008-9 (average annual increase was £51.65 with a standard deviation of £172.04).

How did changes in spending at the HAC compare with overall government spending during this period? Were these changes in line with the bureau-shaping or public service motivation expectations? Figure 37 below presents this comparative analysis. Data are presented in index form, with 1999 as the base year. This would suggest strong support for the bureau-shaping expectation, with spending at the HAC rising much faster year on year than government or the level of inflation. Of course, the small size of the HAC and the limited number of data points presents some limitations on drawing conclusions from this analysis.

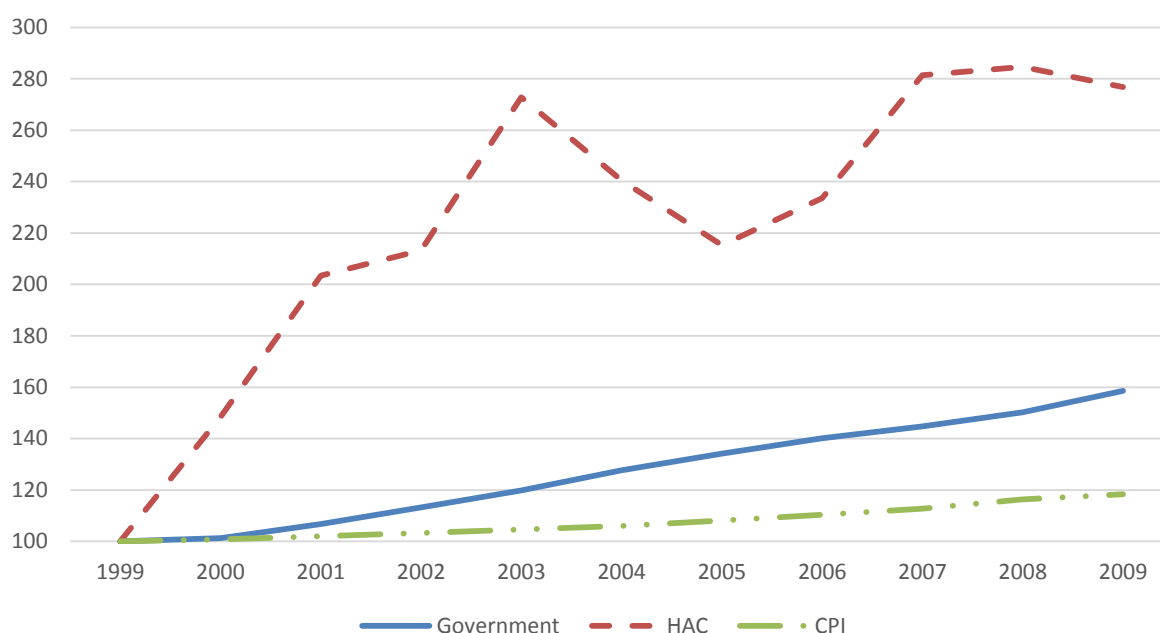


Figure 34: HAC v government spending indices (base year: 1999 = 100)

Budget shape expectations

Figures 36 and 37 present the budget shape analysis. Both the bureau and core budgets increased over this period. However, as a proportion of the bureau budgets, the core budget decreased slightly on the maximum definition and remained fairly constant over the period on the minimum definition. In 1999, the core budget represented 91 per cent of the bureau budget on the maximum definition, compared to 74 per cent in 2009-10. However, the ratio fluctuated considerably over the period, peaking in 2005-6 at 93 per cent and being at its lowest in 2003 at 43 per cent (average annual change was -1.75 percentage points with a standard deviation of 17.03). On the minimum definition, which includes the costs of staff and office premises, the ratio of core to bureau budget also fluctuated over the period, with an average annual change of 0.37 percentage points (SD = 13.49). While a simple comparison of core-to-bureau budget ratios in 1999 and 2010 would be in line with expectations of the bureau-shaping model, the changes over the period are much more complex.



Figure 35: HAC budgets, 1999 to 2009

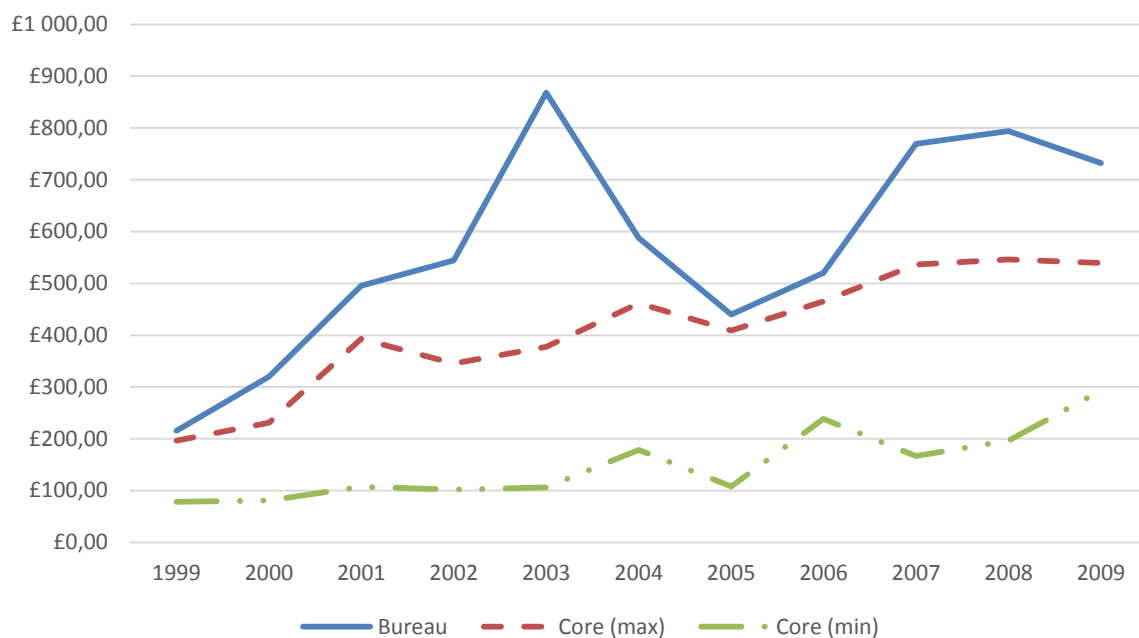


Figure 36: HAC budget changes per registrant, 1999 to 2010 (April 2013 prices)

Change drivers expectations

My textual analysis covered annual reports, business plans, minutes of Council meetings⁴³ published by the HAC and related documents by its successor regulator and its sponsoring department, including an independent review of the Council commissioned by the department in 2003. This analysis suggests that there are three key change drivers affecting the HAC in the period from 1999 until its abolition in 2010.

Insularity

The case study in chapter 4 and the annual reports published by the HAC give an impression that, for much of its existence, the Council was an insular body, quite forgotten by its sponsoring department, the government and wider world of professions regulation. Its first Registrar retired after twenty five years and was succeeded by his son (who held the post for ten years); several of the first Council members had children who later also served as Council members and there are several names that appear repeatedly, albeit in different roles and different guises, over the lifetime of the organisation. The small size of the regulated profession, historically dominated by small companies and larger, generally family-owned businesses, and its control of the regulator (in a legal majority on the Council until 1991 and then, until 2005, in control in every other way) gives a real sense of an insular, inward looking and captured regulator. From around 1998 or 1999, it becomes apparent that changes in the wider world would affect the HAC and the regulated profession's dominance of it. For example, in 2002, the outgoing Chair of the Council stated:

“There has been tremendous change both in the market for hearing aids in the UK and in the nature of relationships between the key players in that market during the six years in which I have been Chair. I believe that the HAC has made a positive contribution to improving the effectiveness of private hearing aid dispensing for the benefit of consumers and the profession.” (HAC 2003)

Change and abolition

⁴³ I was given access to copies of the minutes of all meetings of the Council (its main meetings, excluding committee meetings) from its first shadow meeting in December 1969 until its abolition in July 2010. The content analysis presented here includes minutes for the period 2005 to 2010, for which electronic minutes, in Cabinet Office style, were available.

The final decade of the Council's lifetime was dominated by a series of significant, externally triggered changes. In the early 2000s, it becomes clear that the sponsoring department (then known as the Department of Trade and Industry) began to be increasingly interested in the activities of the Council. The first was to put the relationship between the Council and the department on a more formal basis, in line with other public bodies. The annual report of 2002 makes clear that this involved some substantive changes:

“The requirements of the change to NDPB status have proved more challenging than first appreciated. Nevertheless, good progress was made in developing financial forecasts covering the next three years, and outline corporate and business plans have been prepared.” (HAC 2002)

Two events in 2005 then appear to have made a considerable impact on the Council. The first was the appointment of a new chief executive and, over the course of a year, the complete change in staff, internal organisation and internal systems and procedures. It appears that this appointment was made on the insistence of the sponsoring department and causes some tensions within the organisation and the Council. This appointment was followed almost immediately by the announcement of government proposals to abolish the Council and transfer many of its regulatory functions to a successor body. In its final annual report, the Council provided a short history of the organisation, which provides the following commentator on this proposal:

“At the Council's meeting in March 2005, the first attended by the newly appointed Chief Executive, the Chairman of the Council took a call from the Department for Trade and Industry. Chris Hughes was informed that the Chancellor of the Exchequer, Gordon Brown, had just announced the abolition of the HAC as part of his Budget Speech on the future of a number of regulators. The Government had accepted the recommendations of Philip Hampton, of which the HAC was one.”
(HAC 2010)

It is clear from this and from the Council's minutes that it was not advised or in any way involved in the review that led to these proposals being made. Unlike the GTCE

(which mounted an unsuccessful campaign against its abolition proposals, at least in public), some individuals at the HAC seem to have embraced the opportunity presented by these proposals, as made clear in the organisation's 2007 corporate plan:

"In March 2005, the Government announced its intention to abolish the HAC and transfer its statutory responsibilities to successor bodies. The Council welcomed this proposal and took the opportunity to consider how the provision of hearing aids should be regulated in the future." (HAC, 2007a)

Indeed, one member of staff (who joined as part of the changes in staff and organisational structure that started with the appointment of the new chief executive) commented:

"I could see the change would improve consumer protection. It would also be beneficial to the profession, through better, more up to date and lower cost regulation. I also thought that it would look good on my CV and that I would make some pretty good contacts out of it for my future career. All in all, it was a win-win."
(as quoted in O'Leary, 2010; p45)

Throughout the five years between the government's proposals and the abolition of the organisation, a repeated theme that comes through the textual analysis is that the exogenously driven abolition proposals were seized upon by some at the Council and used to justify a series of internal changes and policy development. This is made clear in a comment from the 2008 annual report:

"The past year was again one of significant change for the HAC. In part this was a response to external developments, such as implementation of the Hampton review, but largely we have driven these changes to improve the service for consumers and to bring the HAC in line with regulatory best practice." (HAC, 2008)

The HAC also lobbied government, both to implement its abolition but to change its successor regulator. It appears to have engaged with ministers, civil servants, other

regulators, consumer groups and other relevant stakeholders in a concerted effort to achieve its abolition and to ensure its preferred succession arrangements. It responded to a number of consultations, by HM Treasury, and the departments of Health and Trade and Industry. Its 2006-7 annual report lists a number of organisations it met with to discuss the government's proposals and to put forward its preferred arrangements. It worked closely with the HCPC (the HAC's preferred successor regulator) to develop and consult upon the changes to the regulatory regime.

And while these changes were endogenously driven, were in line with the size and shape expectations of the bureau-shaping theory and appear to have furthered the work-related utilities as expected by Dunleavy's model, the changes were justified in terms of the public interest:

"The transfer was good for the public and good for the industry. Consumers are better protected and the burden of regulation has been reduced by over £1 million per year." (HAC 2010)

It is clear that the HAC was proud of its achievements. Its final annual report includes a guide to other public agencies on how to successfully manage an agency termination and it also stated that the 'HAC is the first statutory body to be abolished after the Hampton Review on simplifying regulation and dispensers are the first statutorily registered profession to move into the HPC' and that the change had been a 'highly effective piece of regulatory reform' (HAC, 2010). The HAC itself commented that:

"The sustained commitment of the sponsoring team and other groups within BIS, engagement with the profession, and the unwavering support of the Health Professions Council, the RNID and other charities ensured that Ministerial commitment, parliamentary time and the support of the Department of Health finally delivered the change." (HAC, 2009)

Indeed, the Department of Health, in its public consultation document on the proposed changes transfer in regulation, commented:

“The provisions contained within the Order have the support of both regulatory bodies. The abolition of the HAC also has wide stakeholder support. During the passage of the Health and Social Care Act 2008, the Government amendment abolishing the HAC and enabling the transfer of its register of dispensers to the Health Professions Council was well received and supported by all the key stakeholders.” (DH 2008)

Exogenous or endogenous change drivers?

Overall, my textual analysis and count of external versus internal drivers of policy change at the HAC would suggest the developments are in line with the expectations of the bureau-shaping model. Figure 38 below presents my analysis of the external versus internal drivers.

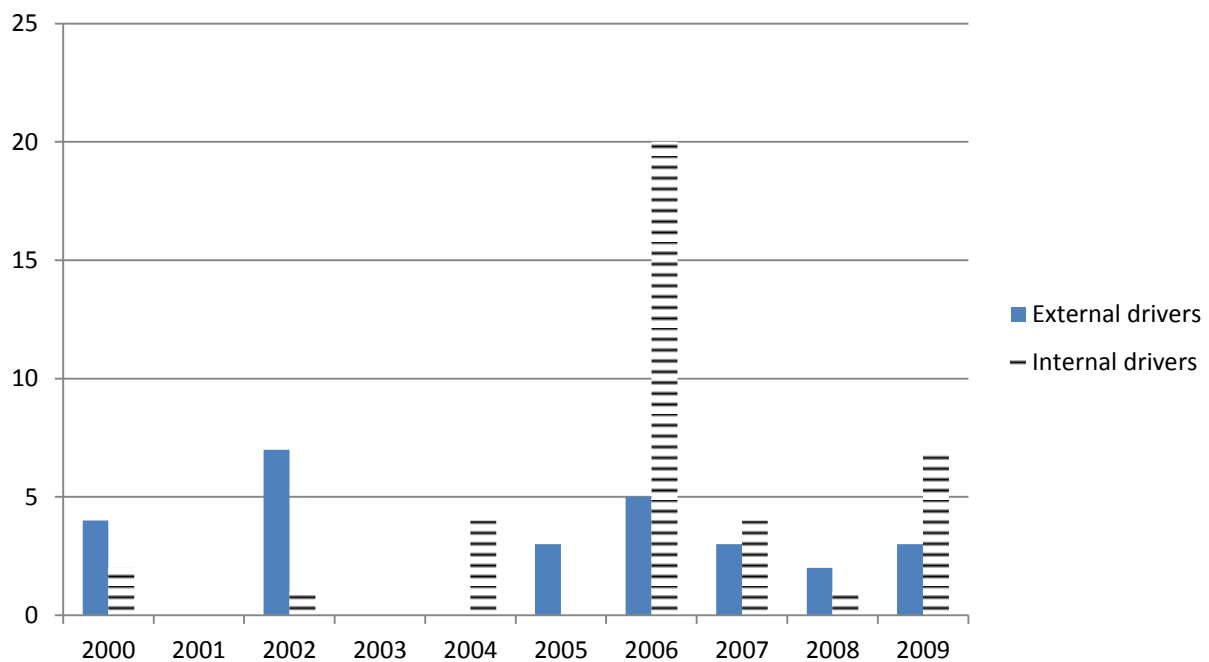


Figure 37: Count of external versus internal drivers of change

My textual analysis strongly suggests that externally driven policy changes were seized by some at the HAC as opportunities to shape the agency and thereby focus on policy work. These developments also seem to have reduced the extent of capture by the regulated profession of its professions regulator. This appears to be a

plausible explanation for the change in perception of stakeholders of the Council (although it simply reflects my analysis of published documents, many of which were published by the HAC itself).

5.10.1 Conclusions

Of the four regulators considered here, the HAC presents the most evidence in line with the expectations of the bureau-shaping model. Table 21 below provides a summary of findings outlined above.

<i>Theory</i> Expectation	Bureau-shaping	Public service motivation
Budget size	Increase above overall government spending. Strong evidence in line with this observation.	Increase in line with overall government spending.
Budget shape	Decreasing core to bureau budget. Contracting out of routine functions. Increase in policy work. Strong evidence in line with this expectation.	No specific expectations.
Change driver	Endogenous. Strong evidence in line with this expectation.	Exogenous.

Table 20: Bureau-shaping versus PSM at the HAC

While the HAC provides the strongest evidence in line with the bureau-shaping conclusions, all four regulators considered in this chapter provide a mixed picture, with some observations in line with the public service motivation expectations. I discuss this further, along with some of the limitations of this approach, in the concluding section of this chapter.

5.11 Conclusions

Overall, this analysis does not provide overwhelming evidence in line with the expectations arising from either the bureau-shaping or public service motivation theories. The table below provides a summary of the overall conclusions I draw from this analysis. A single plus sign indicates some support, two plus signs indicates strong support.

<i>Regulator</i>	<i>Budget size</i>	<i>Budget shape</i>	<i>Change drivers</i>
<u>ARB</u>	PSM ++	BS ++	BS +
<u>GTCE</u>	BS +	BS ++	BS +
<u>HCPC</u>	PSM +	BS ++	BS +
<u>HAC</u>	BS +	BS ++	BS ++

Table 21: Public versus private interests of regulators

In terms of budget size expectations, two of the regulators considered experienced a level of growth in the size of their budgets that was similar to overall government spending, in line with the expectations of public service motivation. As I noted in the introduction, the bureau-shaping expectation is that regulators are closer to the budget maximizing behaviour than other agency types, although I suspect that Dunleavy's model does not account for the institutional constraints placed on professions regulators by the fact that the regulated profession meets the entire operating costs through registration fees.

Dunleavy's model also posits changes in time in the proportion of overall budget accounted for by the core costs of staff and office accommodation, and such changes can be observed in each of the four regulators considered here. In each case, some of this change can be explained by an increase in the numbers and costs of complaints against registrants, which are typically managed by external legal specialists. While most UK professions regulators have experienced increases in such complaints over the last twenty years, the level of increase varies both over time and between regulators, and a mix of exogenous and endogenous factors have been identified as potential causes. But taken alone, changes in the size and shape of regulator budgets, even when in line with the expectations of the bureau-shaping,

are not in of themselves indicative of bureau-shaping behaviour of civil servants. I argue that we also need to explore whether the drivers of change are exogenous or endogenous to the agency, and how agency staff react to external drivers. In this area, each of the four regulators have changed focus, resources or workload in ways that are consistent with the bureau-shaping model.

While, on balance, I would suggest this analysis tends to support the bureau-shaping model more than the public service motivation theory, the evidence is far from being overwhelmingly conclusive. It relies on qualitative analysis of published documents and annual budget data. By their very nature, reports published by regulatory agencies reflect collective action by agency staff and are unlikely to emphasise the self-interest behaviour of those staff; serving the 'public interest' is the dominant narrative of such documents. This analysis also only covers four regulators, each of which has a unique story to tell. The HCPC is the only multi-profession regulator in the UK and now regulators some sixteen, quite different professions. The GTCE had a life of just twelve years, during which it had a difficult relationship with the multitude of unions covering the teaching profession. The ARB has also had a difficult relationship with profession, though represented by a single, long standing professional body. And the HAC regulated a small profession, which evidence suggests had captured the inward looking body, until changes in the organisation and government proposals to abolish it were followed by significant change and policy focus.

While each of these four regulators has a different narrative, they are not outliers to a homogenous mass involved in professions regulation. Rather, as I made clear in chapter 1, there is a high degree of variation, over time and between cases, in how professions are regulated in the UK. As such, and given the nature of the analysis outlined above, it is not possible to draw any wider conclusions about any of the other agencies that regulate UK professions.

6 Professions

6.1 Introduction

What motivates those involved in professional bodies and associations when they engage in the professions regulation policy process? Are they seeking to further the interests of their profession or the wider public interest? In this chapter, I draw on the five case studies set out in chapter 4, published documents and elite interviews with $n=46$ key individuals. I must make clear that the interviews were not spread evenly across the case studies, and the analysis presented here with respect to pharmacy is based on just three interviews. I start by developing my critique, set out in chapter 3, of rent seeking and public service motivation theories, applying this specifically to how these theories deal with the professions conceptually and what challenges they pose for examining them empirically in relation to my case study professions. I also set out a set of expectations for each model that I would expect to observe, and how I use these expectations to explore whether public or private interest theories provide greater explanatory power of the motivations of professions in the regulatory policy process.

6.2 Rent-seeking

As a basic premise, rent loosely represents incomes higher than would otherwise be earned. In relation to the professions, the introduction of, or amendments to, specific regulatory restrictions on the entry and practice of a profession creates a monopoly. Such monopolies provide a wealth transfer mechanism, from consumers to producers. This can act as a powerful incentive for individual professionals to (1) resolve collection action problems by engaging in professional bodies/associations (2) collectively act to achieve such monopolistic systems and (3) collectively act to capture those government agencies responsible for managing and maintaining these monopolies. The resources used to achieve these are considered socially wasteful and this process is known as rent seeking. While the rents extracted may benefit individual professionals, seeking these rents involves collective action.

As a model, rent seeking shares with bureau shaping many core assumptions, including an **as-if** assumption that actors make decisions on a fully rational basis and that they do so in order to further their own interests. Like bureau shaping, the rent seeking model seeks to explain policy outcomes and effects by examining the actions of a single group of actors – in this case, professions⁴⁴. While this provides a parsimonious view of the regulation policy process, it perhaps privileges and over-estimates the role of one interest group over another and fails to take account of the dynamic, negotiated nature of professions regulation policy.

I have already identified the conceptual problems of rent-seeking theory, and want to develop those as they apply specifically to the professions. There are also significant problems in testing whether, and to what extent, rent seeking provides a reasonable explanation of the motivations of professions. Of course, I am not seeking to measure the extent of rent seeking or to estimate the economic and social costs of such behaviour. Rather, I am seeking to explore the causal mechanism underlying professions' engagement in the regulation policy process.

Indeed, I would face several substantive issues in any attempt to measure the extent of rent seeking. Such measurement would require quantitative analysis to model data on the costs, prices and earnings (Philipsen, 2009; p207). The lack of such data often means that such methods cannot be used (Philipsen, 2009; p208). The situation is further complicated in relation to teachers (where earnings are set through national negotiation and it is not possible to distinguish between market-level earnings pre and post the introduction of regulation) and pharmacists, whose employment is split between a nationally negotiated pay system in the public sector and those who work in the private sector.

There is also an issue around consumer information costs. One of the key public interest arguments for professional regulation identified in the literature is the

⁴⁴ As I have previously stated, I recognise that regulators and other groups may also engage in rent seeking behaviour, but have limited my use of this model to my examination of the motivations of professions (specifically, professional bodies). However, given the ability of regulators to externalise compliance costs and the lack of competition for the regulation of any given profession, it may be the case that regulatory agencies engage in rent seeking behaviour, especially to further their policy-based work-related utility. This is one possible explanation for the over-populated healthcare professions regulator landscape, which includes nine separate regulators and a regulatory 'overseer'.

asymmetry of information between consumer and profession and, in particular, issues in relation to consumer evaluation of the quality of services (Arrunada, 2004). When looking at the cost of rent seeking, most empirical research does not seem to account for the potential information costs faced by consumers when assessing the quality of services on offer from different professionals and whether these costs are reduced through the minimum standards and restrictions on who can practice in each profession that regulation imposes.

There is also the issue of explaining regulators' collusion with professions that is necessary for rent seeking to lead to rent creation or extraction. There is discussion in the literature about regulators' future job prospects and regulatory capture as possible explanations for this collusion. While such explanations may be plausible in terms of economic regulation, they seem less so in terms of professions regulation. The education and training required in most professions is substantive and may last several years. Architects, for example, can expect to spend seven years of training before being qualified to practice autonomously. These sunk costs are unlikely to encourage any architect to wish to seek employment with the ARB as a means of capturing that regulator, and it is highly unlikely that any future job for ARB member of staff would be enticing if it takes some seven years to be able to take up that offer. Indeed, by and large, professions regulators in the UK tend to be staffed by individuals with no previous or future position within the professions they regulate.

6.2.1 Expectations

There are three observations I would expect to see if the rent seeking model provides more explanatory power of the motivations of professions in the regulatory policy process.

Endogenous versus exogenous

Rent creation and extraction would incentivise professional bodies to actively seek regulation. I would expect to see calls for the introduction of statutory regulation to be initiated and led by professional bodies and for bodies to actively engage with processes that might result in statutory regulation. Here, I want to suggest that 'rents'

might go beyond pecuniary interests and may include professional status; that is to say, the introduction of statutory regulation may not lead to increase in earned income but might be perceived as in the interests of the profession because of the status it confers.

Competition versus collaboration

Professions may be represented by one or a number of associations, and professions are not the only interest group engaged in the professions regulation policy process. A consistent theme in much of the private interest literature is around interest group competition (Becker, 1983) (Kroszner and Stratmann, 1998), and in relation to professions regulation this competition aims to align professions regulation policy with their objectives (Bryson and Kleiner, 2010). I would therefore expect to see evidence of competition between different professional bodies (where there is more than one representing the profession) and also between professional bodies and regulators.

Collective action and capture

Core to the rent seeking thesis is that the opportunity of rents incentivise individuals to resolve collective action problems and to work in professional bodies/associations to rent seek. Such collective action will not be one-off behaviour but will require sustained action over time to create and extract rents. Once a market has been closed by professions regulation, I would expect to see two further actions. First, the professional body will seek to ensure it can influence the regulator and will resist any proposals that reduce its influence and ability to further the interests of the profession. Secondly, in areas where there is a higher likelihood of regulation being introduced or entry requirements being changed, I would expect to see greater levels of professional body activity.

6.3 PSM and the professions

In contrast to private interest models, the public interest explanations of the motivations of professions in the regulatory policy process is less well developed. As I outlined in chapter 1, much of the rhetoric of the professions is around the professions serving the public interest. But despite this, there is some debate amongst PSM scholars as to whether public service motivation is a trait that is specific to those employed in the public sector or is tied to the conceptually wider delivery of public services. Andrefuhen-Biget, Varone and Giauque (2014; p808) state that 'public service motivation is not 'an exclusive feature of public employees' but rather a commitment to public service values. Perry and Hondeghem make clear that PSM is not about public sector employment (2008, as cited in Kjeldsen, 2014; p101), though both Perry and Kjeldsen seem to have conflicting opinions on this. Kjeldsen has also stated that PSM is 'positively associated with public sector employment (Kjeldsen and Jacobson, 2012; p899) and James Perry had previously restricted PSM to 'primarily or uniquely in public institutions and organisations (Perry and Wise, 1990; p368). In her PhD thesis, Lois Redman-Simmons (2007; p52) argues that James Perry states a clear association between the professions and advancing social norms such as 'caring, social justice and the common good' and thereby demonstrate high levels of public service motivation, particularly through membership of professional bodies.

Such is the confusion that Lotte Bøgh Andersen concludes that there is disagreement about the 'relative importance of sector and occupation, but both are value-orientated departures from the simple economic incentive theory' (Andersen, 2007; p1). There is a second issue with respect to using public service motivation theory to explore the motivations of professions. As I established in section 5.4.1, public sector motivation is about individual motivation. It is not about collective action and it is not about organisational decision-making⁴⁵. This causes a major difficulty for using PSM to explore the motivations of professions in the regulation policy process. Generally speaking, individual professionals do not engage directly in the regulation

⁴⁵ Though I should make clear that there is a complex, contested and empirically less than clear relationship in PSM around the possible socialization and organisational norm aspects of PSM.

policy process. They do so collectively, though professional bodies and associations and, in relation to one of my case professions (teachers), through trade unions.

That PSM has no specific understanding of collective action makes it difficult to use this model without some loosening of its underlying assumptions or providing an account that is consistent with public service motivation and collective action through professional bodies/associations.

6.3.1 Expectations

There are three observations I would expect to see if the public service motivation construct provides more explanatory power of the motivations of professions in the regulatory policy process.

Endogenous versus exogenous

Public service motivated individuals have a significant 'commitment to the principles of democratic governance' (Houston et al, 2007; p2). As I established in section 5.4.1, individual civil servants passively respond to changes proposed by politicians and sponsoring departments either positively (where they perceive that such changes are intended to improve the delivery of public services (Naff and Crum, 1999 as cited in Wright, Christensen and Isett, 2013; p238) or negatively, when they perceive the changes are the outcome of cost-cutting measures (Micheli, 2012, as cited in Wright, Christensen and Isett, 2013; p239). As such, I would expect to observe professional bodies reacting positively to government proposals to introduce statutory regulation. It is unlikely that professional bodies would initiate such proposals.

Competition versus collaboration

Prosocial behaviour and collaboration are core assumptions of the PSM construct. I would expect to see professional bodies working positively and collaboratively with regulators to introduce and manage regulation. Moreover, a key part of this construct is the public service motivated individuals put the public interest ahead of their own interests. I would therefore expect to see professional bodies respond positively to

proposed changes in regulation that further the public interest, even where such proposals may have an adverse effect on the professional body or the profession.

Collective action

Public service motivation is individual action and PSM has no explicit collective action mechanism. Public service motivated individuals will engage in professional bodies to demonstrate their individual commitment to public service.

6.4 Rent seeking versus public service motivation theory: implications for this research

As with the bureau-shaping model, it is important to stress that evidence that professions may enjoy rents does not, in of itself, suggest that private interest motivations are at play. Professions regulation may be introduced in the public interest and, whether planned or not, result in rents that are enjoyed by the regulated profession. What is needed is an exploration of the evidence in support of the above expectations, taking account of the different causal mechanisms that are implied by public versus private interest theories. Figure 39 below compares the two different causal mechanisms.

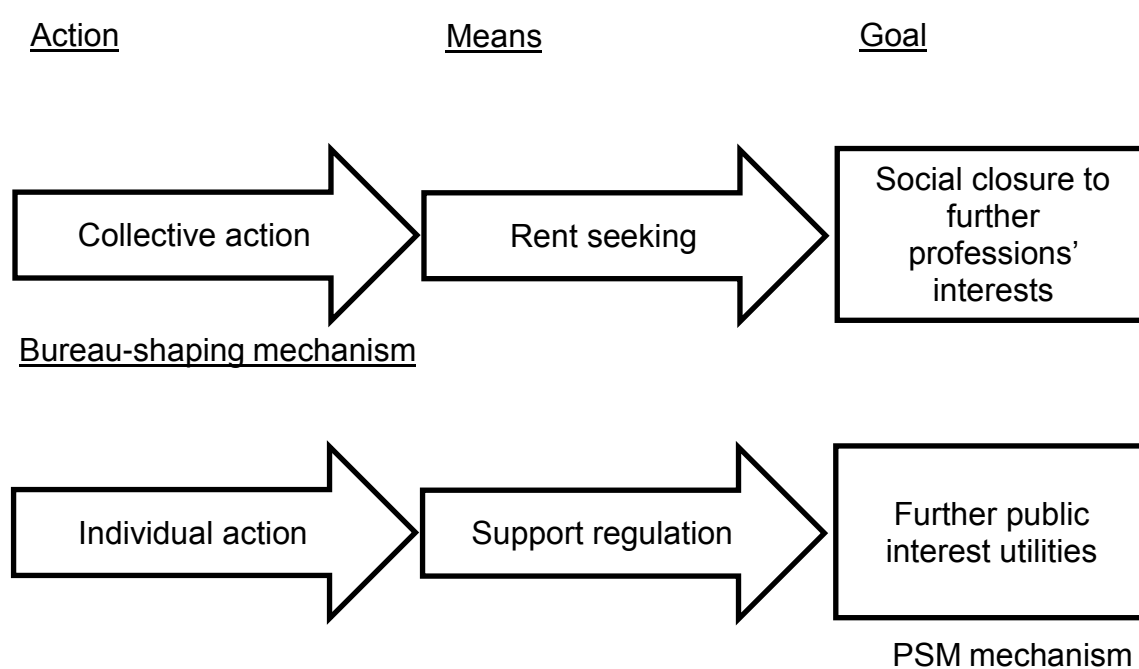


Figure 38: PSM versus rent seeking causal mechanism

In the next five sections, I draw on the case studies provided in chapter 4, n=46 interviews with a range of stakeholders and analysis of policy and other published documents to explore whether rent seeking or public service motivations provides a more powerful explanation of the motivations of professions engaged in the regulation policy process.

6.5 Architects

6.5.1 Analysis

Endogenous versus exogenous

Several sources suggest there are two important facets to the regulation of architects; the nature of the specialist advice that architects provide and the physical impact on our environment in terms of buildings. This ‘public good’ element was used as a public interest justification for regulation. One interviewee commented that architecture was a public good and that architects had a ‘responsibility not only for a specific client but also for a wider public.’ Indeed, one interviewee commented that the public service had been an important draw to the profession in the post-war period, commenting:

“as a lot of architects joined the profession, particularly those who now are 40, 50 somethings, let's say, they quite purposely in the post war bonanza of the welfare state, of public sector building procurement, they - quite purposely those architects joined - they want to put the world right and have a social conscience. They wanted to build better schools or better hospitals.”

Dunleavy (1985) comments on this and the decline in the employment of architects by the public sector from the late 1970s. This would seem to be an exogenous factor affecting the labour market of the regulated community.

An interviewee recognised that building design and construction was separately regulated through the planning process. There are also market mechanisms for managing this public good. In a review of a number of professions in 2003, the Office of Fair Trading stated that

“...an architect’s poor design for a hospital or skyscraper can have obvious and wide-ranging implications for third parties. In practice, of course, there are counter-mechanisms (such as reputation effects and liability for negligence) which help to deter such short-sighted behaviour.” (OFT, 2001)

It is clear from a number of (albeit it largely RIBA) sources that the historical development of the regulation of architects was driven by the professional body. Both Ball (2009) and one interviewee made this clear, stating:

“The RIBA lobbied for the regulation of architecture right back from Victorian times”

Several interviewees commented on the kudos or status of being regulated, particularly when architects often work in multi-disciplinary teams where they are the only statutory regulated profession. There was seen to be differences with the profession on this, with one interviewee commenting that ‘a fair proportion, and we haven’t tested it recently, of the membership mostly small practitioners or employee architects value it as something special and different’.

Overall, this analysis provides some support for rent seeking expectations, in that the professional body led the campaign to introduce statutory regulation. As I will establish in the section on collective action and capture, there is no evidence of economic rents being created by this regulation, though some evidence to suggest non-pecuniary benefits including professional status. My analysis in chapter 5 suggests that the profession encourages the regulator to take legal action to protect its market closure and thereby limit the professional ‘kudos’ to registrants. However, as I will establish in the next section, recent actions by RIBA are not entirely in line with the rent seeking expectations.

Competition versus collaboration

While the RIBA is the main professional body for architects, there is some cross-over in roles between architects and other professions (surveyors, engineers) and in recent years an associated profession (architectural technologists) has developed. The OFT commented that the body representing this associated profession:

“..claim that the statutory protection of the title ‘Architect’ is unfair and ineffective. They argue that the fundamental difference between Architects and architectural technologists is the nature of qualification process: architects’ training is design-based whereas technologists’ training is science-based.” (OFT, 2001)

It is also clear that there is a difficult relationship between the professional body and the regulator; that while the profession had pushed for statutory regulation, the outcome was not entirely to their liking. One interviewee commented:

“ I always think you should be careful what you wish for really, in about 1920s the government at that time said okay we're not going to allow you to regulate yourselves architects.”

Another interviewee commented:

“I think that the profession is always caught between wanting to limit access to others to practice in its field and therefore wanting regulation to stop other new entrants. Then not wanting its own activities to be overly regulated because that's a right hassle and puts a lot of on-costs, if you like, transaction costs on what they can do.”

A further interviewee recognised the ‘very odd complex peculiar relationship it is so dependent on personalities both executive and non-exec level’. This complex relation includes periods of hostility; on several occasions since 1998, RIBA has undertaken and published reviews and reports arguing for the abolition of ARB. Indeed, one interviewee commented that:

“the RIBA's on this cleft stick and the government has privately said though it is - if the profession didn't want it they'd probably do - they'd probably get rid of it. But as the profession is in the main wanting it - and every time we do a survey in the main many value it”

This is a tension I have previously identified; that while the professional body may not value the statutory regulation of architects, individual members of the profession do seem to value it. Indeed, one interviewee commented that RIBA's position was:

“....to support the current system to make sure it minimizes the regulatory function it's just about keeping the register and the standing of the professional conduct function is the ARB's role....”

There is some competition between the two organisations, with one interviewee commenting that ‘we run a professional conduct system as well as the ARB we work in tandem’. The two organisations also work collaboratively, especially in relation to Europe:

“..we are working very closely with our Regulator because we both have exactly the same view of what we're - what we want - the new Directive to do.”

Despite some collaboration with the regulator, the evidence here is much more in line with the expectations arising from the rent seeking model; competition and conflict and the professional body trying to further its own interests and the interests of the profession.

Collective action and capture

The RIBA is one of the oldest professional bodies examined in this research and probably one of the most well-resourced, with a substantive central London headquarters. It is the dominant organisation representing the profession. RIBA also provides membership benefits, identified by one interviewee as including:

“...a library and the practice guidance and everything else, all this stuff and tools you need to practice. We also provide professional indemnity insurance...”

There was no evidence to suggest that the regulator had been captured by the profession, with one interviewee stating that the regulator employed ‘someone with an architectural qualification, but he is not an architect’ and another suggesting that ‘you can’t have a regulator without that professional input otherwise you won’t have any understanding’ and a third interviewee stating that it was ‘probably a very good reason why you don’t have any architects in ARB, is because actually it’s bureaucracy, the last thing you need is a professional’.

There is also little evidence to suggest that capture may have increased barriers of entry into architecture. The level of educational requirements for registration predate the establishment of the ARB. It takes seven years to qualify as an architect in the UK. Although one interviewee identified a large applicant-to-place ratios for prestigious schools, across the board there is a retention problem, so that ‘(d)espite the rapid expansion in student numbers in the Part 1 course since 1988, the number of students passing Part 3 has remained stable’ (Langlands, 2005). The profession also experiences low earning potential and employment is highly affected by economic downturns. One interviewee commenting that ‘(m)ost people assume that architects are well paid and that doesn’t help the profession when they are not’ and another interviewee commented:

“..the earnings profiles of architects are more akin to a creative industry like musicians and actors. There’s a few very, very well paid global stars and a lot of people at the average salary. The average salary of a UK registered architect, qualified for five years is very low, it’s been depressed in the last year or two, it’s about £42,000 which is less than half what a GP’s is.”

It would be tempting to conclude that this runs counter to the expectations of rent seeking and regulatory capture, which imply labour market restrictions and higher earning potentials. However, as architects have been regulated since the 1930s, it would be difficult to assess whether the labour market conditions described above would be any different without regulation.

There are also some interest market effects within Europe and globally. Architecture is increasingly seen as a global profession, employed in professional services firms, with one interviewee commenting that 'UK architectural practices are - a lot of them are quite international, there's a lot of international work done from a UK base'. And while architects are governed by an EU profession-specific recognition of professional qualifications system, there is a wide variety within Europe on the levels of qualification necessary to qualify as an architect – the lowest level of qualification takes about four years compared to the highest of seven years in the UK. One interviewee commented:

"The seven-year system which the ARB recognises that's the way for UK registration is the most onerous and the most lengthy of all the European ones. At the moment you can go down to about four years, four years of just a university degree."

Another interviewee was more direct about the intra-Europe competition at play:

"(t)he Bologna Process is something which is definitely in German universities' interests and French universities' interests and so forth and leads to some frankly purely national interests on the part of universities that would love to have a greater global recruitment. Why is it that the UK does so well?"

This seems to run counter to the 'market for lemons' public interest arguments, which suggests consumers are unable to differentiate between architects on the basis of quality and, coupled with high education costs, this incentivises a 'race to the bottom' in an unregulated market.

There is some evidence of the profession resolving collective action problems to further its interests and of the professional body providing incentives for this. It also suggests some conflict of interests within the profession, which again would be in line with rent seeking expectations. There is no evidence that further the public interest is part of this incentive structure. There is no evidence provided in this research to suggest that this collective action has led to regulatory capture or any economic rents.

6.5.2 Conclusions

Overall, this analysis presents a mixed picture by suggesting that, on balance, rent seeking provides greater explanatory power of the motivations of professions and professional bodies. The table below summarizes this analysis.

<i>Theory</i> <i>Expectation</i>	Rent seeking	Public service motivation
Endogenous versus exogenous	Strong evidence in relation to creation of regulatory monopoly. Mixed evidence in managing monopoly,	
Collaboration versus competition	Strong evidence of competition and conflict between professional body and regulator.	
Collective action and capture	Strong evidence of resolving collective action problems. No evidence of regulatory capture. No evidence of economic rents.	

Table 22: Rent-seeking versus PSM for architects

6.6 Hearing Aid Dispensers

6.6.1 Analysis

Exogenous versus endogenous

This analysis suggests a very complex picture with regards to the role of the professional body in lobbying for regulation. As the case study in chapter 4 makes clear, the regulation of hearing aid dispensers was introduced through a Private Members' Bill supported by the main consumer group, Action on Hearing Loss (then

known as the Royal National Institute for the Deaf, RNID). On several occasions, the regulatory regime was extended, each time initiated by members of Parliament with ties to consumer interests. Despite this, it is clear that consumer bodies were less than impressed with the regulatory regime:

“...there was a significant degree of hostility towards dispensers and towards the HAC in terms of the ethics of dispensers and the competence and appropriateness of the HAC in a context where the overall primary view of the RNID....”

Though the regulator's 2007-8 annual report makes the following comment with respect to the passage of the legislation that abolished the HAC and transfer its functions to the HCPC:

“It would have been considerably harder to move legislation through Parliament without the support of consumer groups, in particular the RNID.”

Nor is there any evidence to suggest that the professional body was involved in discussions about the closure of the regulator and transfer of its functions to the HCPC, as illustrated by one interviewee's comment 2005 proposals:

“(the professional body had no role in the proposals). None. None at all. They were not even on the radar, the professional body”

Another interviewee commented that the profession:

“...has gone through quite a few changes in the past few years a lot of which has been completely outside its control but it's done its best to try and get to grips with them. “

Initially, there was some resistance to the proposals from the professional associations. One interview suggested that there was 'tremendous resistance to the HPC, tremendous resistance from the professional organisations'. Published documents and interviews suggest that some in the profession supported the proposals, some wanted to retain the HAC as a separate regulator for hearing aid

dispensers and others wanted to deregulate the profession. In the period between the proposal and the publication of specific policy instruments to implement the change, there is significant evidence of discussion, debate and disagreement within the profession, although eventually:

“They were resistant at first, then saw the benefits, started talking about the benefits, what they could do for the individual, profession and the business, and then started to champion it, and started to run it.”

And another interviewee stated:

“Once the Council went into its sunset period, BSHAA saw the need and opportunity and was encouraged to take a more active role.”

And one interviewee (though not a member of the profession) commented:

“I think they would see the main benefit for their profession being increased visibility and recognition of their profession. I suppose it’s more that if you don’t have it, it can be a barrier in other walks of life.”

There is some evidence to suggest that the professional body initiated some changes to the specific conduct requirements for hearing aid dispensers, as one interviewee commented that the introduction of CPD requirements in 2004 had been driven by the professional body ‘because the professional body had had its own CPD framework, voluntary CPD framework for some time’. But the professional body also opposed plans to change the entry requirements for registration, proposed in 2008, although this opposition seems to have been located in commercial, rather than professional, interests:

“The market players were doing their own training and therefore didn’t want to disrupt it, so they had investment in existing systems and they were training their workforce to work for them, although of course, they’d describe it as being far more public benefit.”

Indeed, overall there is little evidence that the professional body lobbied for, initiated or led any of the changes in the regulation regime covering hearing aid dispensers. Substantive changes to the regulatory regime appear to have been initiated externally to both the profession and the regulator, and both seem to have reacted positively to the proposals. This would seem in line with the PSM expectations, although the discussion around supporting the proposals include a mixture of self and public interest justifications. There is little to suggest that the profession saw regulation as part of their professional identity or status.

Collaboration versus competition

Hearing aid dispensers are part of a wider family of audiology professions. This family is trained, regulated and represented in a variety of ways. As one interviewee commented:

“...having those different routes and different registration umbrellas is nothing other than confusing and also tends to make those parts of the profession be separated.”

Which another interviewee suggested was not in the public interest:

“The number of registers that people will need to look up I think it's actually very confusing.”

And another interviewee commented:

“BAA and BSHAA are separate organisations looking after their parts of the workforce really. There will be some practitioners who are in both but BSHAA generally is around looking after hearing aid dispensers and BAA is generally an NHS practitioners”

There is some evidence of competition between these different parts of the family of audiology professions alongside some evidence of professionalisation. One interviewee commented that during its regulation under the HAC, dispensing experienced an ‘evolution of a quality healthcare profession from a marketing

profession' and another interviewee that the 'vast majority of audiology people trained as technicians'. Another commented:

"..even within the NHS professions we've got three separate training routes for people who are tending to be siloed in their approach to audiology pathways and audiology as a profession.."

And another interviewee suggested:

"..there is a degree of vested interests on both sides both sides approached it different, but both wanted to do it for their members."

As I suggested in the previous section, there is evidence that the professional body initially resisted the 2005 proposals to change the regulatory regime, which seems to have put them in conflict with the regulator, which supported the proposals. One interviewee suggested that:

"They hadn't had much to do with government, and policy, but there was a breakdown of real communication and relationships and so my analysis after these first meetings of being bullied was what I just explained, some of them knew what they were doing, some of them didn't know, some didn't understand"

This analysis suggests competition between professional bodies and within the family of professions, often driven by the self-interests of individual groups and bodies. This evidence is in line with the rent seeking expectation.

Collective action and capture

Hearing aid dispensers may not have been actively involved in establishing, developing or maintaining the regulator regime around their profession, but several interviewees strongly stated that regulatory capture had taken place. One interviewee commented:

“The larger players insulated themselves from regulatory action by regulatory capture and to that extent could actually enhance their brand quality without having to do too much except to individual cases.”

Another, in discussing a meeting shortly after the government’s proposals were announced, stated:

“..it was a real bully boy meeting, real bully boy, you’re not going to do that dut dut dut, and I have to say it was probably a couple of hours of listening to them about what (the regulator) was going to do on their behalf.”

These comments suggest that the commercial interests of dispensing companies were at play, not necessarily the professional interests of individual hearing aid dispensers. There is of course linkages between the two, but dispensing (as with architecture, pharmacy and a number of professions not covered by this research) there can be conflict between commercial and professional interests that is not addressed by either rent seeking or public service motivation models.

This capture was not the result of regulator staff being tempted by future job prospects, nor is there any evidence of dispensers being employed by the regulator; when asked about such profession/regulator cross-overs, one interviewee commented that they had ‘never heard of that sort of swapping’. In terms of the board’s composition, dispensers had been in a minority position since 1991 and interviewees suggested that the change in personnel at the HAC in 2005 fundamentally changed the position. But capture, as the regulatory lifecycle models discussed in section 3.3 suggests, is a dynamic process change can be challenged by regulators, government and others.

6.6.2 Conclusions

This analysis suggests that changes to the regulator regime affecting dispensers were exogenously initiated, seized upon by the regulator (as established in section 5.10) and eventually embraced by the professional body. Alongside those developments, the dominant position of some commercial interests in the capture of the regulator was challenged. This raises a number of interesting questions in

relation to the development of the rent seeking thesis as it is specifically applied to the field of professions regulation. Table 24 overleaf summarizes the findings in relation to the dispensing profession.

<i>Theory</i> Expectation	Rent seeking	Public service motivation
Endogenous versus exogenous calls for regulation	Limited evidence in line with expectation.	
Collaboration versus competition	Strong evidence of competition and conflict between professional body and regulator. Some evidence that conflict was driven by professional interests.	
Collective action and capture	Strong evidence of resolving collective action problems. Some evidence of regulatory capture.	

Table 23: PSM versus rent seeking for dispensers

Taken with the analysis presented in section 5.10, the evidence presented here suggests that private interests models provide a more convincing explanation of the motivations of both the profession and the regulator.

6.7 Pharmacists

6.7.1 Analysis

Endogenous versus exogenous

As with architects, it is clear that the introduction in 1868 of statutory regulation of pharmacists was the direct result of lobbying and campaigning by the profession. I have described these developments in the case study in chapter 4 and interviewees also supported this conclusion. Unlike architects, pharmacist regulation was delivered by the professional body for over one hundred and fifty years, the 'regulatory bargain' which meant that the profession was given legal powers to create and maintain its own monopoly. My analysis here suggests three issues affect the professional body's more recent actions with regard to pharmacist regulation.

These are (1) changes in relation to community pharmacy; (2) the government's proposals, set out in the 2006 White Paper, *Trust, Assurance and Safety*, to separate the professional body and regulatory functions of the Royal Pharmaceutical Society and (3) as with architects, the development of a para-profession in relation to pharmacist assistants.

As I established in chapter 4, there is an important distinction between pharmacists and pharmacies, particularly high street retail outlets. For some time, exogenous changes in the retail sector and because of the NHS⁴⁶ have significantly impacted on the roles of community pharmacists, to the extent that much of the evidence talks about the deprofessionalisation of this group. One interviewee stated:

“There is an unfortunate removal of professional responsibility and a growing need for professional empowerment.”

And several documents and interviewees discuss the tensions these changes cause for individual professions, the professional body, the Department of Health, the regulator and schools of pharmacy. These changes appear outside the control of key stakeholders, particularly the Royal Pharmaceutical Society.

In 2010, significant changes were made to pharmacist regulation when the statutory registration and regulation functions of the Royal Pharmaceutical Society were transferred to a new, *statutory:independent* regulator. This change was first publicly suggested as one of a raft of policy proposals made in the Department of Health report, *The Regulation of Non-Medical Healthcare Professionals*. This suggested that the role of a number of regulators (including the RPS) of ‘promoting the profession’ should be reviewed. Specific proposals to split the professional body and regulation functions of the RPS was made a year later in the White Paper, *Trust, Assurance and Safety*. This stated that:

⁴⁶ The case study in chapter 4 suggests that there was some erosion of role from community pharmacists to medical doctors following the introduction of the NHS in 1948. This suggests a level of inter-profession competition that is not really addressed in the academic literature.

“...the Government will work with the pharmacy profession to establish a General Pharmaceutical Council responsible for the regulation of pharmacists and pharmacy technicians, and the registration of pharmacy premises.” (HMG, 2007; p6)

None of the available evidence addresses the question of whether the Royal Pharmaceutical Society (RPS) were actively engaged in the initiation and development of this policy. It is clear from published documents, once the policy proposal was made, the RPS engaged with the working party established to implement it. One interviewee commented:

“The RPSGB either directly or through other parties did a lot of the thinking about how it would work. The law that came out of Trust, Assurance and Safety in 2006, so it was a done deal from a legal point of view. So there was a fair amount, oh ok, all of the thinking about what the regulator would do was done by the DH and the CHRE to some extent.”

The Department of Health had recognised the need for regulated professions to support the proposals set out in the White Paper. It is published discussion around the proposed changes, the department stated:

“Another important note of caution is the need to maintain professional buy-in for the system of regulation.” (HMG, 2007; p42)

That the introduction of the General Pharmaceutical Council was achieved a year ahead of the original plan and without any substantive, public discontent would suggest the both the profession and the professional body supported the proposed changes. Indeed, in contrast to the policy proposals concerning the regulation of psychotherapists (which, as I established in the case study, were met with a hostile reaction and campaign against the proposals), there is little mention of the proposal in the main practitioner journal and no wider academic debate about the pharmacy proposals, either positive or negative.

Along with the separation of functions and setting up of a new regulator, statutory regulation was introduced to a para-profession, pharmacist technicians, for the first

time. This is an interesting development. In many other fields, para-professions are regulated (if at all) by a separate body, usually not of the *statutory:independent* form. Architectural technologists, for example, are not regulated and in the legal professions, legal executives are regulated through a chartered body and paralegals are unregulated. It is unclear what impact, if any, this will have on the future development of the pharmacist profession.

Overall, the substantive changes affecting pharmacist regulation in the last decade have been exogenously driven. The split of regulator/professional body proposals were very much couched in public interest terms, though the government was at pains to stress that there was no evidence that the arrangements were being used to the profession's advantage. The professional body responded positively to these proposals, which seems in line with the expectations of public service motivation theory.

Collaboration versus competition

It is clear that the split of functions and the creation of a new regulatory body caused a number of concerns for the Royal Pharmaceutical Society. The likely impact on costs, membership fees and the resulting impact on membership numbers was reflected in comments from two interviewees. The evidence was less than clear around the level of collaboration or competition between the RPS and its regulator, with one interviewee stating:

“....the relationship between us and the General Pharmaceutical Council and thought we would spend a lot of time on that. It is good. It is progressing and productive. At first, we didn't really know how to talk to each other, and we may a couple of mistakes by not telling them things and they did as well, but we are in a pretty good place with them.”

Collective action and capture

It is clear from the case study set out in chapter 4 that, historically, the professional body had successfully created and captured the regulatory process. In setting out the proposals to change the regulatory regime, the government seems to have both

accepted and rejected the regulatory capture analysis. In its wider discussion of healthcare professions regulation, the government stated:

“Enshrining professional roles in statute can create “closed shops” in which professions unnecessarily protect parts of their own sphere of practice from developing occupational and professional groups” (DH 2009; p25)

But in its specific discussion of the Royal Pharmaceutical Society, the government stated:

“While there is no suggestion that they are expected to put the good of the profession before that of the public, these words have caused uncertainty and dispute at times. Although the roles of professional leadership and promoting the profession, which have to be exercised for the public benefit, do indeed benefit the public, there is a tension between their focus inwards on the professions’ interests and the need for the regulator to be seen to be free from such influences.” (DH, 2006; p39)

It is also clear that this regulated status is important to the profession as part of their professional identity. So too is membership of the Royal Pharmaceutical Society, as one interviewee made clear:

“...would say to you that you are a professional, and as a professional it should be inconceivable to you not to be a member of your professional body. You will work with colleagues in other professions and you will notice that to a very high degree they are all members of their professional bodies. It is very important that our organisation protects your long term interests, the health of your whole career will be affected by things that we are implementing now, that we are advocating on your behalf. “

The changes in pharmacist regulation made in 2010 have clearly changed the balance of power between the regulator and the regulated population. It is also clear that there is a good relationship between the two organisations, not least as the respective headquarters are next door to each other. While there is sufficient

evidence of past regulator capture, there is no evidence on whether this relationship continues to exist today.

6.7.2 Conclusions

Drawing on the above analysis, the table below summarizes the findings with respect to the pharmacy profession. I should repeat that the interview evidence used in this analysis is drawn from three elite interviews, including one from each of the regulator and the professional body.

<i>Theory</i> Expectation	Rent seeking	Public service motivation
Endogenous versus exogenous		Strong evidence in line with expectation.
Collaboration versus competition		Some evidence in line with expectation.
Collective action and capture	Some evidence in line with expectation.	

Table 24: PSM versus rent seeking for pharmacists

6.8 Psychotherapists

6.8.1 Analysis

Endogenous versus exogenous

Unlike the three professionals I have considered so far, psychotherapy is not represented by a single, dominant professional body but rather by a multitude of associations, professional bodies and voluntary registration systems. And as I established in chapter 4, calls for the statutory regulation of psychotherapists can be dated to the early 1970s. Several attempts were made to introduce such regulation, which included Private Members' Bills introduced in the 1980s and 2000s. While there is evidence to suggest that these developments were supported by some parts of the profession, it is clear that the profession did not initiate or lead this work, and that support was not universal. One interviewee commented about the Private Members' Bill introduced by John Alderdice in 1999:

“The reason John Alderdice got involved in the previousadministration was to bang all our heads together. Of course, he came in and he was completely hopeless, we couldn't agree - we could hardly agree what time to meet, never mind what to do. So it's had a massive impact because many, many successive administrations in the Department of Health have said a plague on all your houses.”

There is no evidence to suggest that the psychotherapy professional bodies were aware of, involved in, or initiated the proposals made in 2008 that the profession should be regulated by the HCPC. One interviewee believed that the proposals were part of wider changes in the meta-regulation of healthcare professionals, stating that:

“...a lot of regulation in policy in recent years has been driven by three particular cases and it is probably two of the three, Bristol and Alderhay and Shipman, probably two of the three would not be any different as a result of any of the policy changes since, only one of the three, the index case, the Bristol case.”

Following the government's announcement that statutory regulation would be introduced, the HCPC was tasked with preparing psychotherapy for this change, developing the requisite suite of standards and transferring the existing voluntary registers to a single statutory register. Initially, there was almost universal hostility to this, either because professional bodies wanted government to establish a separate, psychological regulator or because the professional bodies objected to the principle of statutory regulation. One interviewee commented:

“And (name of organisation) was the only professional body saying that we thought the HPC model of regulation was wrong for psychotherapy. There were other professional bodies saying it was less than ideal, but they could live with it.”

While the professional bodies were divided over the proposals and failed to actively engage in the implementation of the proposals, several consumer representative groups were clearly supportive. One interviewee commented that ‘we felt really strongly that it was important that a statutory mechanism was introduced for psychotherapy’. These voices seem not to have been heard in the policy implementation process. And it is clear that the arguments about whether, and if so,

by whom, psychotherapy should be regulated was entirely located in the interests of the profession and the professional bodies. It is not clear whether these were fully developed arguments, considering all of the different options, or rather an objection to change and uncertainty. One interviewee suggested that ‘people are unwilling to change their point of view and holding very rigidly to something that reflects their own approach.’ Another interviewee explained:

“I think a lot of the time, I don’t think you would characterise the two professional bodies as being anything but aspirant, they have been seeking regulation for a number of years, but they have always wanted it on their own terms, they wanted their own regulator.”

Although another made clear that the eventual, albeit it reluctant, acceptance of the proposals (regulation, even though not on their terms) was driven by professional interests:

“..state endorsed professions, the state endorsed badge was seen as a badge of honour and approval by the state and some people were hungry for that.”

Another commented:

“Now, the development of the profession so obviously is self-interest, but it’s enlightened self-interest”

Overall, this analysis does not provide much support for the expectations arising from either rent seeking or PSM. The drive for statutory regulation came from outside rather than from the profession. Once on the table, the proposals generated much hostility and conflict. Eventually, a few professional bodies reluctantly accepted the proposals but there was not universal acceptance of this. However, these arguments seem to have been driven by professional and professional body interests. One interviewee commented that the various professional bodies were:

“Competing for members but also competing in terms jockeying for position to represent the interests of their members, but with a lot of tensions and contradictions..”

Given these factors, I would suggest that this analysis is more in line with the private interest expectations.

Collaboration versus competition

As is clear from the above analysis, the policy proposals for statutory regulation of psychotherapy engendered competition and conflict – between the profession and the proposed regulator, between different professional bodies and within psychotherapy. One interviewee commented:

“And the problem was that (HCPC was) then lobbied by one of the different strands, 40 or so professional bodies who felt that they should have had a representative on the PLG, so there was a bit of a skirmish about that, with the result that the professional bodies that didn’t have a representative on came and sat in the public seats at every meeting, and because there are 40 professional bodies and 400 odd modalities, is it, in psychotherapy , we has as many wars between those professional bodies and modalities as over what we were doing as a committee, and people, personalities came out in a way in support of what they fervently believed in as a professional when someone else held a different view.”

And one interviewee, in discussing the conflict between the two largest professional bodies, commented:

“..there is a degree of vested interests on both sides both sides approached it differently, but both wanted to do it for their members.”

Part of this conflict can be located in different professional identities within psychotherapy. One interviewee suggested that:

“....one of the debates about regulation in the psychological therapeutic profession is that the people in those professions are not used to, not been a part of their

professional construction, and indeed many people operated in those professions precisely because they did not want to operate in a rigid and structured environment.”

Another interviewee stated that:

“...statutory regulation became coterminous with standardization and centralization under the last Labour government and that aspect of it was highly relevant to the debate about whether to regulate psychotherapists.”

The high level of competition and conflict observed in psychotherapy is consistent with the expectations of the rent seeking thesis.

Collective action and capture

It is clear in the case study and in the above analysis that psychotherapy is represented by a complex, competitive set of professional bodies and associations. This competition has been linked to several failed attempts to introduce statutory regulation. It contrasts with many of the other groups examined in this research, who are represented by a single dominant body and with many of the conceptualisations of professions, which see a single professional body as a key part of professional norms and identity. One interviewee commented

“One thing I would say, which is probably another reason why a profession or group needs to have reached a certain level of maturity, for want to another term, before you regulate them, is how far regulation can be an impediment to ongoing growth and development of the profession.”

This seems to be consistent with the sociological descriptions of professionalisation outlined in section 1.3, and would suggest that psychotherapy has yet to complete this process. But it also raises private versus public interest questions about professions regulation, also raised by the procedural approach to professions regulation I discussed in section 5.9. Because if regulation is, or can only be, introduced at the end of the process of professionalisation - if it is introduced when the profession has already established entry, conduct and exit standards – then

surely this is more in line with a professional identify/status explanation (that is, private interest) than an asymmetrical information (that is, public interest) justification? The issues of asymmetrical information would seem to be more evident in occupations that have not established standardized entry requirements than in those where such arrangements are a quality signal of the type suggested by Spence (1973).

As I set out in the case study in chapter 4, the change of government in 2010 resulted in a change of policy towards the regulation of psychotherapy. One interviewee commented:

“I think it was the way they lobbied government. There was outside pressure and the judicial review and if I was coming in to government regulating Psychotherapists and Counsellors would not have been my number one priority. And being pragmatic, why fight in someone else’s war. It’s not going to get you votes in Dagenham, I’m afraid”

Another commented:

“...think (the relevant minister) said at the time that she had never had as big a post bag on a single issue as she did over regulation of psychotherapists. I don’t think it was a priority to tackle, to be honest.”

The same interviewee also commented:

“.. I think you have a group of people for whom, now statutory regulation is off the cards, are worried that it leaves some psychotherapists on a worse on footing than compared to, for example, counselling psychologists who are regulated, so perhaps employers would prefer to commission services from counselling psychologists rather than psychotherapists..”

6.8.2 Conclusions

Psychotherapists are a fascinating case study because, in many ways, their engagement with the professions regulation policy process is not consistent with

either rent seeking or public service motivation theories. Rent seeking would suggest that the profession would resolve collective action problems to seek and extract rents through the creation of a closed labour market. The analysis here and in chapter 4 suggests a failure to resolve collective action problems at the level of the whole profession and some hostility to statutory regulation. Public service motivation theory would suggest that professions would accept statutory regulation where it furthers the public interest. Despite calls for consumer groups for regulation, arguments for and against made by the professional bodies seem almost entirely located in private interests. Table 26 below summarises my findings with respect to psychotherapy.

<i>Theory</i> <i>Expectation</i>	Rent seeking	Public service motivation
Endogenous versus exogenous	Some evidence in line with expectation	
Collaboration versus competition	Strong evidence in line with expectation.	
Collective action and capture	Some evidence in line with expectation.	

Table 25: PSM versus rent seeking for psychotherapists

6.9 Teachers

6.9.1 Analysis

Endogenous versus exogenous

As for psychotherapists, there is no single body that represents the whole of the teaching profession. But in contrast to psychotherapists and the other groups considered in this research, teachers are highly unionized, and there are over five different unions covering the profession. It is clear from the case study in chapter 4 that there was a long campaign to establish a professions regulator for teaching, with several failed examples observable over the past one hundred years.

There are two policy proposals relevant to this discussion: the introduction of the GTCE as a teachers' regulator and the decision to abolish it. In relation to the first, one interviewee commented:

“All unions lobbied for one. All wanted one.”

Although another noted:

“There was never any real drive for it. Teachers felt they had the union, if you like, or the professional association and therefore it was always seen as.”

And a different interviewee noted:

“...the trade unions were to have a significant input into Labour Party policy formation that it would be negligible as far as the Conservatives are concerned.”

The political dimension of the policy process here is interesting, and one that several interviewees raised. Another interviewee commented:

“...being involved in politics as I was at the time, I was a great supporter of having something like the BMA. In my view it was an attempt to raise the status of teachers, given the fact that then, as unfortunately now, the status was quite low, with competing professional associations, with one acting almost like a trade union.”

This quote perhaps illustrates some of the confusion around the role of the GTCE that was evident throughout its existence. This is an issue that I touch upon in the section 4.6. It in part relates to different understandings of the nature of teaching as a profession. One interviewee commented:

“I think the best word is contested. There is a real lack of consensus about the professional status of teaching, what kind of professionalism it is.”

Another commented:

“...wouldn't say I'm a traditionalist in terms of professionalism, but I think it is part of professional status. Medicine is regulated. They have a professional status.”

Solicitors will have a professional status. I thought that teachers needed a professional body to get that professional status."

This suggests that the unions were involved in the development of these policy proposals, and that this development was framed in terms of status, identity and professional interests. But as I shall discuss in the following section, evidence from this research suggests a good deal of conflict and disagreement with the GTCE once it was established, and competition between the teaching unions and between the unions and the GTCE.

What about the proposals to abolish the GTCE? Once established, the GTCE did not enjoy the full support of the unions and individual teachers, but was the profession involved in the formation of the termination? There is no evidence to suggest such involvement. One interviewee commented:

"..the Daily Mail is the barometer of the Coalition in many ways. The Daily Mail and the Telegraph really led these calls for the GTC to be abolished as well. In their view it wasn't harsh enough. They looked at the statistics and I think 17 teachers had been struck off, and that wasn't enough. So they led a real campaign, and it was against the incompetence part of it."

Once the proposals had been announced, several unions came out in support of the GTCE's abolition. The General Secretary of the NASUWT (which had opposed the GTCE from its early days) told the BBC:

"I have frequently said that if the GTCE was abolished tomorrow, few would notice and even less would care. Too much time, energy and resources has been frittered away on pursuing projects and issues which duplicated the work of other bodies and did little or nothing to enhance the status of the profession" (as cited in O'Leary, 2010; p63)

And an interviewee commented:

“The GTC was largely seen as a bureaucratic body by the end. So that part of it I don't think teachers will miss particularly, and certainly heads won't miss it from the ones I've spoken to.”

I have already mentioned the political dimension to the creation and abolition of the GTCE. One interviewee raised differences between the political parties in education policy, and another suggested that '(p)oliticians are keen to see that their legislation is having an impact and, in terms of the GTCE, the measure was number of disciplinary cases. There were just too few of those.'

This analysis suggests that the teaching unions were involved in and supported policy proposals to establish the GTCE, in line with the expectations of the rent seeking model. They were not involved in developing proposals to abolish the GTCE, but seem to have supported it, perhaps reflecting differences between expectations and outcomes and conflict between the unions.

Collaboration versus competition

While many of the teaching unions may have initially supported the introduction of the GTCE, it is clear that such support did not last long. As I establish in the case study in chapter 4, there was conflict and debate during the establishment of the GTCE about the structure, remit and composition of the board, and as one interviewee commented 'teachers have spoken with many different voices. The divisions between the unions affected the GTCE from the outset'. It is clear that this was, in part, related to different expectations about the role and function of the GTCE. One interviewee commented:

“...just thought some professional body, but unfortunately the General Teaching Council in my view was - it was a government set up thing, so it put teachers off. It wasn't organised by the teachers.”

Another interviewee suggested:

“...certainly colleagues just felt it was another thing to pay something for, for what purpose and being under the control of the Government, therefore was it really independent and would stand up for the profession?”

In contrast, one interviewee suggested that ‘It is the state enabling professionalisation to take place. The body needs to be recognised by the state.’ Another commented about competition between the GTCE and the unions, suggesting that the ‘GTCE got involved in promoting the profession. That is the job of the teaching unions.’ Coupled with the evidence presented in chapter 4, this suggests that the GTCE was poorly conceived and, as one interviewee commented, ‘(t)he statute was crackers. GTCE did the best of a bad job’.

Overall, competition between the teaching unions and conflict between the unions and the GTCE are consistent with the rent seeking expectations.

Collective action and capture

Here, interviewees disagreed about whether, and to what extent, the GTCE had been captured by the teaching profession. One interviewee commented:

“...the GTCE, within all of that, there was a perception in the department that it had been captured by the NUT. I think that is extremely unfortunate.”

And a second interviewee, who shared this view, stated that ‘(l)ike any union they will seize their opportunities as they arise’. Others argued that the level of conflict and competition between the unions, and the complexity of the board arrangements for the GTCE, meant that the NUT was not able to capture the regulator. Indeed, it is questionable whether regulatory capture would have been of much economic benefit to teachers or the NUT. The education requirements for registration were set by the Department of Education and not the GTCE. These requirements had been in place for some time, though had been relaxed by the government as part of the push for academies. A survey conducted by the NUT also suggests that teachers’ pay did not

keep pace with increases across the economy as a whole or within the public sector (Allison et al, 2008).

There is evidence of collaboration between the GTCE and the teaching unions to campaign against this change of policy, and one interviewee commented that 'I think the unions on the whole are still very much pro-QTS⁴⁷, because academies tend to be less unionised as well' and another commenting that this campaign was one by which 'the GTCE had shot itself in the foot in the run up to the 2010 General Election.' Another interviewee commented:

"I felt slightly disappointed but only slightly because I didn't consider it to be a body that's had an enormous influence either on the teaching The reason I say that is that I don't think it was a professional body."

And another commented:

"....really strong engagement on a very regular basis about issues of common concern between the department and the workforce and it didn't include the GTCE. So the GTCE just fell of the radar a bit too much."

Overall, there is disagreement around whether the GTCE was captured by the profession, and some evidence to suggest that regulatory capture would not and did not further the economic interests of teachers.

6.9.2 Conclusions

Like psychotherapists, teachers are an interesting case study because of their fragmented representation. Although the antecedents of the professionalisation of teaching can be traced back to the nineteenth century, this has not yet resulted in a single professional body representing the profession. Indeed, it is clear that many expected the GTCE to perform this role, thus confusing the different roles play by regulators and professional bodies. Overall, though, the analysis outlined above

⁴⁷ Qualified Teacher Status, the entry requirement for teaching in a state maintained school

tends to be in line with the expectations of the rent seeking thesis, as summarised in table 27 below.

<i>Theory</i> <i>Expectation</i>	Rent seeking	Public service motivation
Endogenous versus exogenous	Some evidence in line with expectation	
Collaboration versus competition	Strong evidence in line with expectation.	
Collective action and capture	Some evidence in line with expectation.	

Table 26: PSM versus rent seeking for teachers

6.10 Conclusions

What conclusions do I draw from the above analysis? It is clear that the evidence does not overwhelmingly support either model. At several points, the expectations arising from the rent seeking model were not observed, although the evidence was more in line with private than public interest motivations.

Table 28 below summarises the findings with respect to the motivations of professions and professional bodies in the regulation policy process. On balance, this suggests that private interest models are provide greater explanatory power.

<i>Profession</i>	<i>Endogenous v exogenous</i>	<i>Collaboration v competition</i>	<i>Collective action and capture</i>
<u>Architects</u>	RS++	RS++	RS
<u>Dispensers</u>	RS	RS+	RS++
<u>Pharmacists</u>	PSM++	PSM+	RS+
<u>Psychotherapists</u>	RS+	RS++	RS+
<u>Teachers</u>	RS+	RS++	RS

Table 27: Public versus private interests of professions and professional

There are several key points to make here. Much of the analysis presented in this chapter suggests that professional bodies reacted to, rather than initiated and led, proposed changes in their regulatory regimes. Indeed, wider changes in the meta-regulatory framework seem to have influenced government policy proposals for several of the professions, although there are temporal issues that I have not explored in this research. At several points, professional bodies seem to have initially reacted in a conservative, way, seeking to maintain the status quo (with the notable exception of pharmacy) and do not appear to have taken an approach that would be consistent with individually fully rational actors. For me, these examples raise questions about the extent to which actors satisficed rather than maximised their utilities.

Secondly, there are differences between those professions with a single, dominant professional body and the two professions whose representation is fragmented. Private interest models, influenced by an economic understanding of human agency, posit a simple hypothesis that occupations seek market closure to further their interests. But for two of the professions discussed here, sociological descriptions of the professionalisation process provide interesting insight for the lack of whole profession action.

Finally, neither model seems to fully account for the complexity of the interest group landscape nor how this affects real-world decisions. I discuss this issue in greater depth in the concluding chapter of this thesis.

7 Public

7.1 Introduction

So far, I have compared public and private interest explanations of the professions regulation policy process, examining models that seek to explain the actions of two key non-political actors; regulators and professions. I have suggested that, at a theoretical level, private interest models provide greater explanatory power of the policy process around professions regulation. This is partly because, for me, the conception of altruism and serving the public interest that is core to public service motivation theory is strikingly similar to forms of expressive (and therefore selfish) utility.

Yet there is one clear way in which the claims of PSM scholars can be tested, an area where I would expect significant differences between public and private interest models. This key area is the public and its role in the public interest. For at the heart of PSM is the idea of the public interest, that civil servants work for the 'common good'. Surely, therefore, the public whose interests are being furthered should play a significant role in public service motivation theory? There should be a clear conceptualization of how civil servants define, determine, work towards and further the public's interests, and get feedback from and respond to the public's assessment of whether their interests are indeed being furthered? And this will surely be quite different to how the role of the public is conceived in self-interest theories? In this chapter, I want to explore the role that the public plays in each of these models. In particular, I want to explore differences in:

1. What role does the public play in the theoretical consideration of public service motivation;
2. What expectations arise from this theoretical consideration;
3. Is there any evidence in line with these expectations; and
4. Is there any other evidence that the public might play a role in the concept of public interest that is core to public service motivation theory?

7.2 The role of the public in the professions regulation policy process

What part does the public play in each of the models examined in this research? Are these roles consistent with the general framework put forward by the models? Do the roles played enable an assessment of which model – private or public interests – provides a more convincing explanation of the policy process?

7.2.1 The public's role in private interest models

The public plays little part in the policy process in the bureau-shaping and rent-seeking models. Implicit in such models is an expectation that groups compete with one another (Becker, 1983) to align professions regulation policy with their objectives (Bryson and Kleiner, 2010). Yet the 'public' are not assumed to be a key competing group in this process. Why? Exploring the assumptions Downs (1957) and Olson (1965) provide a potential explanation for this lack of involvement of the public and lack of any coherent model to explain this.

The first assumption underpinning private interest models that may explain the lack of coherent model around the public's expectations is that set out by Anthony Downs. Downs (1957, p250) suggests two criteria must be met for groups to be able to further their interests. These two criteria are that (a) groups must be aware of their interests and (b) groups must be able to make key decision makers aware of their interests. Both criteria would appear to present challenges to 'the' public, whose interests in terms of professions regulation are unequally dispersed and competing with other, more directly personal interests.

I have previously suggested that the introduction of regulation to a profession is not a one-off process. Typically, as occupations move through the professionalisation process, they will often put in place many of the instruments of professions regulation (entry requirements, accreditation of education and training programme, standards of practice and professional conduct) and will also establish voluntary systems of registration. Such voluntary systems are then replaced by a statutory framework. Once established, this statutory framework is not static, but rather

changes and adapts over time. Given the complexity and uncertainty inherent in this process, it would be exceptionally difficult for ordinary citizens to identify and be able to articulate their interests, even if they were to do so collectively.

In his seminal book, *The Logic of Collective Action* (1965), Mancur Olson, stated:

‘...unless the number of individuals is quite small, or there is coercion or some other special device to make individuals act in their common interest, rational, self-interested individuals will not act to achieve their common or group interests.’ (Olson, 1965, p2)

Here, there are a number of issues that constrain the public from engaging in public policy around professions regulation. First, the potential interest group is large, even if the interest group is limited to those individuals who directly use the services of a given profession. Dunleavy (1991; p49) suggests that size matters: larger groups are more likely suffer participation constraints. Indeed, these participation constraints are exacerbated because for some, using the services of a profession may be a one-off or relatively rare experience. Consider how many times in the average person’s life they would need to engage the services of an architect, solicitor or accountant. Thus, not only is the group large but there is potentially a high turnover of group membership. These group characteristics not only affect the likelihood that individuals would join any collective action to further the interests of the public, but also mean that any group that does form would be unable to identify free-riders or potential members.

Secondly, any benefits that derive from engaging in the policy process will be non-excludable, whether the public interest group is seeking regulation or seeking to prevent regulation. Professions regulation, by its very nature, sets standards for everyone participating in the profession. If these standards do indeed benefit service users, it would be impossible to exclude some service users and include others from enjoying these benefits. Finally, it is difficult to see what coercive or other devices might be used to encourage participation in collective action. The nature of professions regulation, the long length of time it generally takes to achieve statutory regulation dynamics of group membership of ‘the public’ are such that targeted

membership incentives are unlikely to encourage some group members to participate in collective action.

Taken together, Downs and Olson's theories would suggest that, even were the public sufficiently motivated to identify and articulate their interests, they would need to resolve collective action problems to do so. As such, private interest theories do not include any specific role for the public in the professions regulation policy process because the public are not expected to want or be able to resolve these issues. They also provide no basis on which to posit observable expectations about the views of the public on what motivates regulators and professions.

7.2.2 The public's role in public interest theories

Given the importance of the *public interest* to public service motivation theory, it is surprising that its adherents failed to state what constitutes the public interest, how civil servants understand the public interest, how civil servants make decisions about furthering the public interest and how civil servants receive feedback from, and respond to, the public to ensure the work of their agencies is further the public interest. This poses a significant puzzle – if the public are so important to public service motivated civil servants and professions, why is there not a clearly set out theoretical consideration of the role of the public in that public interest? Some PSM scholars have recognised this gap. Andersen et al, for example, argue that:

“Looking after the public interest can be seen as a public value, but we obviously need more concrete values specifying what serving society should include.”

(Andersen et al, 2012; p296)

Andersen et al go on to argue that civil servants need a clear set of public values that specify what the public interest is and what it means (p296). Here, public values are the ‘normative principles on which governments and policies should be based and thus provide direction to the behaviour of public servants’ (p294). However, Andersen et al provide no explanation of how these normative principles are developed, implemented or evaluated. They fail to relate public values to the wider

academic debates about norm formation, interest formation or democratic governance. They provide no theory as to how the public might express, ensure or evaluate that their interests are being furthered by these 'public' values. There is no **feedback loop** within the PSM model that enables civil servants and professions to reflect and evaluate whether they are furthering these public values, whether these public values are in fact 'public' and whether they are delivering to the public interest.

Indeed, in the extensive PSM literature, the public is barely mentioned. One notable exception is contained in a paper presented to the 2007 Midwest Political Science Association conference in Chicago, Illinois, by David Houston, Lauren Harding and Abraham Whaley (Houston et al, 2007). David Houston has written much on public service motivation, and in this conference paper attempted to explore the public's perceptions of the motivations of public servants. Houston suggests that civil servants can be conceptualised as public stewards, as:

"...virtuous, committed caretakers, entrusted with the administration of the commons, guided by the will of the people" (Houston et al, 2007; p2)

As such, they are 'entrusted with the authority to act on behalf of the people' and should be seen as a 'public manager who is both an efficient administrator and a democratic servant' (p3). Houston and his colleagues suggest that the public perceive civil servants as public stewards; that the public see their interests best furthered by civil servants, acting on their behalf and therefore entrust civil servants with this task. They argue that the extant research indicates that civil servants 'espouse values and engage in behaviors (sic) that are consistent with the image of a public servant' (p4). And they cite a large number of studies (Brehm and Rahn, 1997; Orren, 1997; Uslaner, 1993) which show that higher levels of interpersonal trust in members of the public is related to trust in government, which they extend and hypothesize that higher levels of interpersonal trust will be related to greater probability of trusting civil servants as public stewards of the public interest.

And while not explicit in Houston's argument, the public stewards thesis would seem to explain the lack of any theoretical or empirical consideration of the role of the

public in this public interest theory. Put simple, the public simply trust civil servants and professionals and there is no need for any feedback mechanism.

7.3 What does the public think motivates professions regulators?

If David Houston's theory has explanatory power, if the public really do entrust civil servants and professions to further the public interest, then the public would believe that civil servants and professions are motivated by the public interest. It would not be plausible for the public to entrust 'the administration of the commons' to individuals they assume will take advantage of the commons for private gain.

Houston and his colleagues draw on the wider research literature around political trust to identify a number of variables that may correlate with public perceptions of civil servants as public stewards. From this extant research, the key hypothesis I seek to test in this chapter is that higher levels of interpersonal trust should increase the likelihood that civil servants will be perceived as being motivated by the public interest. Based on Houston's review of the literature on interpersonal trust, I also test a number of factors (age, income, and ethnicity) that are associated with different levels of trust.

7.3.1 Data and method

An online survey was distributed to students and staff at King's College, London, via an email invitation sent in December 2012. A total of $n=187$ responses were collected.

The survey included questions on what factors might motivate individuals working for government regulators. The main question posed was:

Thinking about those who work for government regulators, what do you think motivates them in their work?

Respondents were given a list of potential factors and asked to rank these. Factors are either associated with the public interest or private interests. The factors were:

promoting the interests of the profession, working for the public interest, protecting clients/service users, the type of work they undertake, future job prospects, salary, just a job, and none of the above. This list broadly corresponds with interests identified in both public and private interest theories. Indeed, the type of work undertaken is seen as important in the bureau-shaping model (Dunleavy, 1991) and in the public service motivation model (Ritz, 2011; 1130).

I asked a similar question about the motivations of professional bodies/trades unions. While the concept of public steward was originally developed with respect to non-for-profit/social enterprises, I do not consider there is any theoretical basis from which I could have developed tested hypotheses in relation to the professional bodies as public stewards. I present these data as descriptive statistics only.

Responses to the core question about the motivations of regulators were used to generate two dummy variables used as dependent variables in logistic regression analyses. I have used logistic regression because of the categorical nature of the dependent variable and because the independent variables are a mix of categorical and continuous variables. This approach estimates the log-odds that a response will fall in the next highest category of an ordinal scale.

Table 29 overleaf sets out how the dependent variables were generated. Where one of the factors listed under each dependent variable was ranked as most important (ranked first) by respondents it was recorded as 'yes' in the dummy variable. In cases where respondents did not rank any of the factors listed, responses were recorded as missing. A '0=No' was given in each dependent variable where ranks were provided for one or more of the relevant factors, but none were given a rank of 1 by the respondent.

Dependent variable	Motivated by public interest? (0=No/1=Yes)	Motivated by private interest? (0=No/1=Yes)
Factors	Protecting clients/service users	Salary
	Working for the public interest	Future job prospects
		Promoting interests of the profession
		Just a job

Table 28: Dependent variables for logistic regression

The online survey included questions around the use of services of professions, whether the individual was registered with a UK professions regulator or working towards such registration, and socio-demographic information about the respondents (age⁴⁸, income⁴⁹ and ethnicity). The survey asked a number of questions about the types of costs and benefits that arise from professions regulation and which groups might bear these costs and benefits. It also asked whether, in general, respondents felt that professions should be regulated by government⁵⁰.

The survey also asked a number of questions around political outlook. The empirical results published by Houston et al (2007; p15) suggest that political attitudes are unrelated to whether individuals perceive civil servants to be working in the public interest. Two questions focused support for political parties; whether, in general, the respondent supported a political party and, if so, which party was supported. Three questions were also included to examine overall political outlook. These questions were drawn from the British Election Survey 2010 and are considered useful measure of general political outlook. The included questions on taxes (spend more

⁴⁸ Respondents were provided with five age bands from which to choose. In the analysis presented here, age has been treated as a continuous variable.

⁴⁹ Respondents were provided with nine income bands in gradients of £25,000 from which to choose. In the analysis, income has been treated as a continuous variable.

⁵⁰ I originally intended to use this an independent variable as a test of overall attitude towards professions regulation. However, n=17/186 responses answered 'no' to the question 'In general, do you think professions should be regulated by government?', limiting the usefulness of these responses for logistic regression.

or cut); crime (human rights versus cutting crime) and interpersonal trust. A copy of the survey instrument, including the three political outlook questions, is provided in the appendix.

The sociodemographic, regulated status, views on professions regulation and political outlook questions were used as independent variables in the analysis. Four logistic regression models were generated, using the four dependent variables outlined above. Table 30 overleaf sets out the independent variables used in each of the models.

Variables	Variable description
<i>Sociodemographic</i>	
Age	Data collected using five age bands (0-17, 18-24, 25-34, 35-54, 55+ and 'rather not say'). Treated as continuous variable in analysis.
Income	Data collected using nine income bands (in £25k increments to £150k +, and 'rather not say'). Treated as continuous variable in analysis.
Race	Data collected using fifteen responses. Treated as dichotomous variable in analysis. White = 1, BME = 0
Gender	Female = 2, Male = 1
<i>Professional status</i>	
Regulated professional	Are currently or have been regulated in last five years. 0 = No, 1 = Yes
In training	Currently training leading to professional qualification. 0= No, 1 = Yes
<i>Political outlook</i>	
Party support	Generally a supporter of one particular party. 0 = No, 1 = Yes
Tax or spend	Scale of 0 to 100, 0 being cuts taxes and 100 being spent more. Treated as continuous variable in analysis
Crime or rights	Scale of 0 to 100, 0 being be reduce crime, 100 being protect rights. Treated as continuous variable in analysis.
Trust	Scale of 0 to 100, 0 being people can never be trusted, 100 being people can always be trusted. Treated as continuous variable in analysis.

Table 29: Independent (predicator) variables

A total of $n=187$ responses were received. The descriptive statistics are presented in table 31 overleaf.

	Number	Minimum	Maximum	Mean	Standard Deviation
<i>Sociodemographic</i>					
Age	187	1	4	2.51	0.930
Income	187	1	9	3.91	2.350
Race	187	0	1	0.86	0.347
Gender	187	1	2	1.57	0.496
<i>Professional status</i>					
Regulated professional	187	0	1	0.30	0.462
In training	176	0	1	0.17	0.377
<i>Political outlook</i>					
Party support	171	0	1	0.48	0.501
Tax or spend	171	0	100	57.95	25.401
Crime or rights	171	0	100	43.54	22.378
Trust	171	0	100	62.75	21.823
<i>Valid N (Listwise)</i>	162				

Table 30: Descriptive statistics

One of the issues with logistic regression is that it is prone to the biasing effect of collinearity. I therefore wanted to test whether, and to what extent, there might be some relationship between the predictor variables. It would be plausible to assume, particularly given the sample is drawn from students and staff at King's College, that age and income may be related (that is, older respondents are more likely to be working and therefore have a higher income). Equally, there might be a relationship between the two political outlook variables, tax or spend and crime or rights. I therefore undertook correlation analysis before considering whether and which factors should be removed from the models. This analysis is given in the appendix and suggests that, while there is some relationship between the predictor variables, these are weak correlations, suggesting the variables have low levels of shared variance.

7.3.2 Limitations

The purpose of this analysis is not to generate predictions about the extent to which the general public believe that regulators are motivated by the public interests or their own self interests. The small size of the sample, drawn entirely from student and staff at King's College, London, means that such prediction would not be possible. It must also be stressed that there is a lack of complete, well developed theory that is being tested here. Private interest academics simply assume that the public as an interest group are unable to resolve collective action problems. As such, even if the public identified that their interests were at stake, the public would be unable to influence the policy process.

In terms of the public service motivation model, just one paper seeks to provide a model to explain the role and expectations of the public. This suggests that the public see civil servants as 'public stewards' of the public interest. For me, an implicit assumption underlying this thesis is that the public implicitly trust civil servants to act on their behalf.

Coupled with the issues around sample size and nature, the lack of coherent theory to test means that the analysis undertaken and presented here was intended to explore what factors might explain why some respondents believe that regulators or professional bodies/trades unions are motivated by the public or private interest. I do not suggest that these findings can be generalized in any way.

7.3.3 Findings

For members of the public, what motivates those who work for government regulators or for professional bodies/trades unions? To answer this question, I first present data on the ranking given to various factors by respondents to the survey to the two questions around factors that motivate government regulators and professional bodies/trades unions.

Figure 42 overleaf sets out the number of times each of the eight factors was ranked 1 through to 8 with respect to the motivations of government regulators. Table 32 below then gives an overall rank. A weighted calculation was used to generate the total score, where factors ranked first are valued higher than factors ranked second.

Motivating factor	Total Score	Overall Rank
Protecting clients/service users	969	1
Working for the public interest	953	2
Type of work they undertake	771	3
Salary	741	4
Future job prospects	727	5
Promoting the interests of the profession	669	6
Just a job	525	7
None of the above	165	8

Table 31: Overall rank of factors motivating government regulators

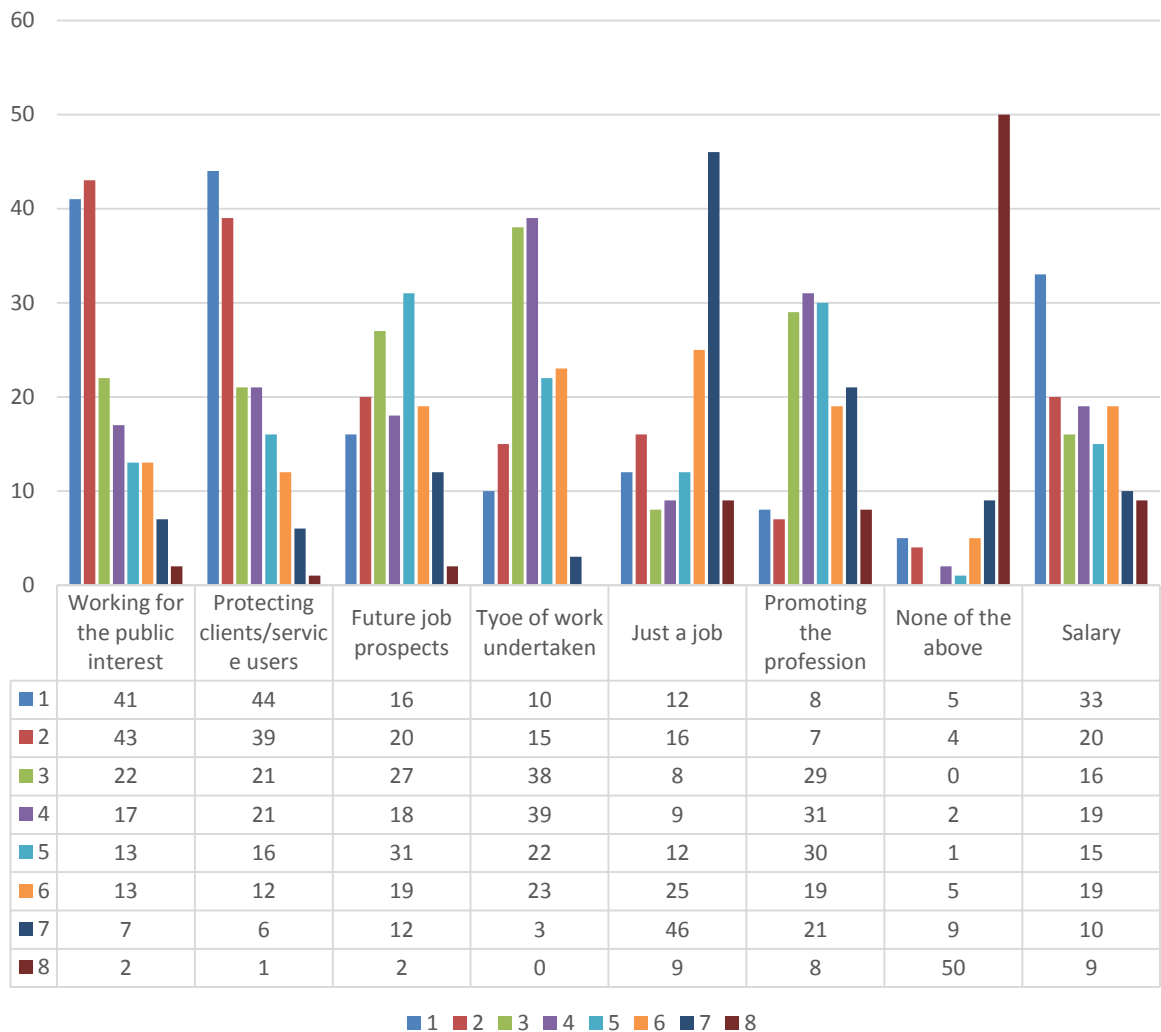


Figure 39: Ranks given to eight motivations for government regulators (n=184/187 responses provided)

The debate around whether public or private interest models best explain the professions regulation policy process is often characterized as an ‘either/or’ argument; two diametrically opposed models competing to explain the policy process. Both sides of this argument assume a single motivation can explain the actions of both regulators and professional bodies; either these two groups are working to further their own self-interests or they are both motivated by a desire to do good for the general public.

This would not seem to be the view of my survey sample. Below are several cross tabulations, coupled with the ranking data outlined above, suggest that some

respondents had different expectations of the motivations of regulators and professional bodies/trades unions.

		Regulators motivated by public interest?		Total
		No	Yes	
Professional bodies motivated by public interest?	No	60	34	94
	Yes	15	49	64
Total		75	83	158

Table 32: Cross tabulation of public interest motivations for regulators and professional bodies

		Regulators motivated by public interest	Professional bodies motivated by public interest
N	Valid	167	163
	Missing	20	24
Mean		0.51	0.40
Std. Deviation		0.501	0.492
Variance		0.251	0.242

Table 33: Descriptive statistics

		Regulators motivated by private interest?		Total
		No	Yes	
Professional bodies motivated by private interest?	No	61	24	85
	Yes	39	43	82
Total		100	67	167

Table 34: Cross tabulation of private interest motivations for regulators and professional bodies

		Regulators motivated by private interest	Professional body motivated by private interests
N	Valid	172	174
	Missing	15	13
Mean		0.40	0.49
Std. Deviation		0.49	0.50
Variance		0.24	0.25

Table 35: Descriptive statistics

What factors explain whether professions regulators are perceived to be motivated by the public interest? Do socio-economic factors and political outlook play a role? Are those in a regulated community more or less likely to believe that their overseers are motivated by the public interest? Table 37 overleaf presents findings to these questions with respect to the $n=187$ members of staff and students at King's College, London, who completed my online survey.

B	S.E.	Wald	df	Sig.	Exp(B)	95% C.I. for
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							EXP(B)	
							Lower	Upper
Age	.055	.231	.057	1	.811	1.057	.672	1.662
Gender	.773	.379	4.153	1	.042	2.165	1.030	4.553
Income	-.034	.082	.166	1	.684	.967	.823	1.137
Race	.230	.532	.186	1	.666	1.258	.444	3.569
Regulated professional	-.855	.393	4.746	1	.029	.425	.197	.918
In training to become a professional	-.808	.547	2.181	1	.140	.446	.153	1.302
Tax or spend	.015	.008	3.318	1	.069	1.015	.999	1.031
Crime or rights	-.005	.009	.277	1	.599	.995	.978	1.013
Trust	.011	.009	1.424	1	.233	1.011	.993	1.030
Party support	.494	.383	1.666	1	.197	1.639	.774	3.473
Constant	-1.838	1.054	3.041	1	.081	.159		

Table 36: Results from logistic regression: regulators motivated by public interests

The full model containing all predictors was statistically significant, $\chi^2 (10, N=149) = 21.144, p < 0.05^{51}$, indicating that the model was able to distinguish between respondents who stated that regulators were motivated by the public interest and respondents who did not. The model as a whole explained between 13.2 per cent (Cox and Snell R square) and 17.6 per cent (Nagelkerke R square)⁵². The model correctly classified 69.1 per cent of cases, compared to 50.3 per cent without the variables in the model.

⁵¹ $P = 0.20$. Given this, I compared the loglikelihood (-2LL) of the model without the variables and the model. The results were 206.511 (model without variables) and 185.407, further suggesting that the model is better at predicting whether a respondent would believe that regulators are motivated by the public interest.

⁵² The Hosmer and Lemeshow significance was $p = 0.57$.

Of the ten predictors (independent) variables included in the model, two would seem to be important. The two variables that made a unique statistically significant contribution to the model are gender and whether the respondent is (or has in the last five years) been regulated as a professional. The strongest of these predictors is whether the respondent was a regulated professional. Respondents who were regulated were less likely to state that regulators were motivated by the public interest than respondents who were not regulated. The second predictor that made a unique statistically significant contribution to the model was gender: female respondents were more than twice as likely to state that regulators were motivated by the public interest compared to male respondents. Neither of these findings are consistent with the hypothesis that higher levels of interpersonal trust would increase the likelihood of regulators being perceived to work in the public interest.

How does this compare to those respondents who stated that regulators are motivated by private interests? In this research, and in the extant academic literature, public and private interests are portrayed as opposites, as two different but opposing explanations. Does this mean that the same variables that predict support for the public interest explanation should also explain private interest support?

	B	S.E.	Wald	df	Sig.	Exp(B)	95% C.I. for EXP(B)	
							Lower	Upper
Age	0.006	0.233	0.001	1	.980	1.006	0.638	1.587
Gender	-0.707	0.378	3.499	1	.061	.493	0.235	1.034
Income	-0.092	0.083	1.241	1	.265	.912	0.776	1.072
Race	-0.459	0.516	0.789	1	.374	.632	0.23	1.738
Regulated professional	0.837	0.390	4.601	1	.032	2.309	1.075	4.96
In training to become a professional	0.207	0.554	0.139	1	.709	1.230	0.415	3.64
Tax or spend	-0.018	0.008	5.496	1	.019	.982	0.967	0.997
Crime or rights	-0.003	0.009	0.093	1	.760	.997	0.98	1.015
Trust	-0.014	0.009	2.307	1	.129	.986	0.968	1.004
Party support	-0.114	0.379	0.090	1	.764	.892	0.425	1.874
Constant	2.460	1.071	5.273	1	.022	11.702		

Table 37: Results from logistic regression: regulators motivated by private interests

This research would suggest otherwise; that different factors might explain whether someone identifies private interest motivations compared to public interest motivations. Table 38 above sets out the results from the logistic regression to assess which factors explain whether respondents identified the private interest as the most important motivator for those working for professions regulators.

As with the previous analysis, the model was statistically significant, $\chi^2(10, n=154) = 22.168$. I again compared log-likelihood (-2LL) between the model without and with variables and the Hosmer and Lemeshow test significance to check goodness of fit (-

2LL was 205.923 for the model without the variables and 183.753 in the model. The Hosmer and Lemeshow test was significant at $p = 0.183$). This suggests that the model was able to distinguish between respondents who stated that regulators were motivated by private interests and respondents who did not. The model as a whole explained between 13.4 per cent (Cox and Snell R square) and 18.2 per cent (Nagelkerke R square). The model correctly classified 70.8 per cent of cases, compared to 61 per cent without the variables in the model. As with the previous model, the predictor variables that made a unique statistically significant contribution to the model was whether the respondent was (or had been within the previous five years) regulated by a UK professions regulator. Regulated respondents were more than twice as likely compared to non-regulated respondents to believe that regulators were motivated by private interests. Table 39 below compares the results from the two models for this predictor variable.

	B	S.E.	Wald	df	Sig.	Exp(B)	95% C.I. for EXP(B)	
							Lower	Upper
Public interest (0=No, 1=Yes)	-.855	0.393	4.746	1	.029	.425	0.197	0.918
Private interest (0=No, 1=Yes)	0.837	0.390	4.601	1	.032	2.309	1.075	4.96

Table 38: Public versus private interests for regulated professions respondents

The results from these two models are broadly mirror images and significant at similar levels. This suggests that, for those regulated professionals who responded to this survey, the public versus private interest debate is one of two opposing explanations. This finding would seem to have real world significance for professions regulators, as it speaks directly to the relationship between regulated and regulator.

However, gender does not seem to be an explanatory factor in the private interests model, whereas it is in the public interest model. Indeed, none of the four socio-demographic predictor variables were statistically significant in explaining whether respondents stated that regulators were motivated by private interests.

The tax or spend predictor variable made a unique statistically significant contribution to the regulators' private interests model. The results here suggest that as respondents state that they want to see more being raised in taxes and spent on health and social care, the less likely it is that they will state that regulators are motivated by private interests. Although this is a statistically significant factor ($p = 0.019$), the impact is relatively low, with an odds ratio of 0.892 (CI 95 per cent +/- 0.015).

7.3.4 Discussion

As previously mentioned, my sample of $n = 187$ respondents is drawn from students and staff at King's College, London. King's provides undergraduate and post graduate taught and research degrees across a range of disciplines, including several (particularly in health and social care) that could lead to some form of professions regulation. I cannot and do not, therefore, draw any conclusions about the general population as a whole.

Secondly, in private interest theories, there is an implicit assumption that the public faces collective action problems and little further theoretical examination of how the public perceives the motivations of regulators is provided. Is there a single 'public' or are there different groups, with different interests and differing abilities to resolve collective action problems? What does this mean in terms of influencing decisions of political actors, such as Ministers, and other non-political actors, including civil servants in regulators' sponsoring departments? Do 'the public' recognise their interests are at stake; if not, why not? What are the implications of this? These are all significant questions that private interest theories fail to address.

At least private interest academics can explain their lack of consideration of the role and expectations of the public. *Public service motivation* places the public interest as the primary concern for regulators and professional bodies yet completely ignores the role and expectations of the public whose interests are apparently being furthered. What constitutes 'the public interest'? Is there a single, coherent set of

interests which can be identified as ‘the public interest’? What happens when the public has more than one, perhaps competing interests? How do pro-social, altruistic civil servants working in professions regulators identify and further these public interests? How do they decide between competing public interests? What happens with regulators and professional bodies have competing understandings of the public interest? Only one paper, presented by David Houston and colleagues to the Midwest Political Science Association conference in 2007, seeks to explain the public’s perceptions of those working for its interests, suggesting that the public sees civil servants (and, by implication, other groups with high levels of public service motivation, including professions) as public stewards of the public interest. This paper presents a weak and under developed theoretical framework that assumes homogeneity within public organisations and the public itself.

The third caveat I think needs highlighting is the usefulness of the models presented here. While each of the four models provided a goodness of fit and were statistically significant (all at the $p < 0.05$ level), the factors identified as significant do not play an important role in explaining why respondents identify public or private interests at play. Table 40 below sets out the factors identified in each model as statistically significant.

Dependent variable	Predictor	B	SE	OR
Regulators	Public interests (1=Yes)			
	Gender	0.773	0.379	2.165
	Regulated profession	-0.855	0.393	0.425
	Private interests (1=Yes)			
	Regulated profession	0.837	0.390	2.309
	Tax or spend	-0.018	0.008	0.982

Table 39: Statistically significant independent variables ($p < 0.005$)

These findings are not consistent with the hypothesis that higher levels of interpersonal trust increase the probability of civil servants being seen as working in

the public interest. As such, this provides no support to the thesis posited by David Houston and colleagues that the public sees civil servants as public stewards and trusts that they will work to further the public's interests. So, if civil servants are not public stewards, the questions I set out at the beginning of this chapter – how do civil servants define the public interest, how do they identify what is in the public interest, how do they test this with the public, how do they respond when their actions are not supported by the public – become even more important. Because as David Houston and his colleagues argue:

“..our conceptualization of public administrators as public stewards demands a high level of responsiveness to citizens and an adherence to democratic ideals that is the basis.” (Houston et al, 2007; p3)

If, as Houston et al suggest, it demands a high level of responsiveness to citizens, public service motivation theory should include some conceptualization of how public service motivated civil servants gain feedback from and respond to the public. That it does not is a major limitation of the theory.

But of more interest to me is that respondents who were members of a regulated profession were more likely to hold different views about the interests of regulators than non-regulated respondents. Overall, regulated respondents were more likely to see regulators as being motivated by their own self-interests and less likely to see regulators are being motivated by the public interest. What might explain this? How would the two theories account for this difference in perception?

There is an important narrative with regards to the public service motivation of the professions. Although this narrative is less well developed than with regards to civil servants, and although there is some debate within the PSM literature as to whether public service motivation extends beyond the public sector, the public spirited profession is one that is found in much of the literature and in policy and applied research documents. Given the relationship between regulator and regulated is much closer than that between the public and regulators, and given that both regulators and regulated are conceived as working to further the public interest, how

would public service motivation account for the views of regulated professions identified in this research?

The simple answer is that PSM cannot account for these differences without loosening the motivation assumption it applies to the professions or without accepting that there might be competing conceptions of the public interest and how these interests might be furthered. And accepting that there are competing understandings of what the public interest means and how to further it would further require that PSM scholars provide some theoretical explanation of how such differences are resolved, how the public provides feedback to, and how public servants respond to, activities that seek to further the public's interests.

What about private interest theories? Can models that posit that regulators and professions are motivated by their own interests when they participate in the professions regulator policy process account for these findings? I would suggest that they can provide a convincing account. This account is set out above; it is the account provided by Downs, Olson and Becker.

Downs (1957, p250) suggests two criteria must be met for groups to be able to further their interests. These two criteria are that (a) groups must be aware of their interests and (b) groups must be able to make key decision makers aware of their interests. Professions would appear to be able to meet both of these criteria. In section 1.3, I discuss the process of professionalisation, by which a group becomes a profession and of professional socialization, by which an individual develops professional norms and behaviours. Through these processes, it is argued that individuals develop a keen sense of the profession's interests and become incentivised and constrained by the institutional arrangements of their profession. As discussed, the professionalisation process is core to the sociology of the professions, but largely ignored by political science or economics. But for me, it is key to understanding how individuals become to identify with the occupational group, how professional groups resolve collective action problems (Olson, 1965) and why individuals would act collectively to further these professional interests.

And in doing so, in seeking to collectively further the economic and (as I established in chapter 6) the status and non-economic interests of the profession, these groups

come into competition with regulators also seeking to further their interests. For me, the five case studies presented in chapter 4 and the analysis in chapters 5 and 6 suggest ongoing negotiation, competition, compromise and sometimes conflict between regulators and their regulated professions. This is a dynamic relationship; regulatory pressure leads to a 'growing need for collective representation' (Clarke, Doel and Segrott, 2004; p330) as occupation groups seek to make and manage markets and monopolies. In turn, regulators respond to the changing tactics of professional bodies. This dynamism and competition is not apparent in the two private interest models considered in this research, both of which assume almost omnipotence in terms of regulators (bureau-shaping) and professions (rent-seeking).

7.4 Other evidence

Of course, just because PSM academics have failed to conceptualise the role of the public in defining the public interest, and just because I have failed to find any evidence in support of the proposition that the public simply trusts that civil servants are working on their behalf, is not in of itself sufficient evidence to refute public service motivation theory. Because, as I noted in chapter 1 and as observed with in relation to the regulators of my five case study professions, there have been changes in the meta-regulatory regime that seem consistent with the PSM proposition.

Over the last twenty years, a number of reforms to the size and composition of regulator boards, and a move from the election by registrants to selected by ministers as a means of appointing registrant members of boards. Such changes have been justified in the public interest as a means of reducing the capture of regulators by their regulated populations.

These changes have occurred across different regulated sectors. For example, in response to a consultation in 2009 undertaken by the newly formed Legal Services Board, the Professional Services Authority (then the CHRE) summarized these changes in the meta-regulatory framework:

“There have been significant developments in the regulation of the health professions over recent years. One of the major drivers for this has been to establish full regulatory independence from undue influence by any sectional interests in order to enhance public trust, confidence and assurance in the regulation of the health professions.” (CHRE, 2009)

Changes in the size and composition of boards were made to the regulation of architects as part of the establishment of the ARB, to the HAC and to the HCPC. The failure to amend the large, inflexible and teacher-dominated GTCE board was seen by some as being key to its eventual demise. One interviewee commented that:

“..the GTCE, within all of that, there was a perception in the department that it had been captured by the NUT. I think that is extremely unfortunate’ and highlighted the lack of influence it had a result.” (interviewee)

It is plausible that these changes to the meta-regulatory regime were made to increase the role of the public in defining the public interest of regulators. Certainly, a number of interviewees suggested that it decreased the influence of the registrant populations. But these changes involve both government and government departments. In this research, I have not explored the motivations of either of these groups in the professions regulation policy process, and they could be explained both by public and private interest motivations.

7.5 Conclusions

Of course, it would be easy to overstate these findings and to seek to generalize them to all regulated professionals. My sample, by its nature, contains a distinctive segment of regulated professions, namely those at King’s and who are likely to either be in professional training or involved in professional education. I have no basis on which to consider whether or not the views given by respondents to my survey are representative the wider body of professionals. For me, the findings represented here raise further questions to be addressed through research in the field

And however important this facet of public service motivation theory might be, lack of evidence in support of this postulate is not, in of itself, evidence that private interest theories of the motivations of those engaged in the professions regulation policy process are more convincing. It is simply a finding that one part of public service motivation theory is not supported by the evidence generated through my research.

8 Conclusions

8.1 Introduction

What motivates professions and regulators when they engage in the professions regulation policy process? Are they motivated to serve their own interests or the wider, public interest? This key question has been at the heart of policy and academic debate since the first independent regulatory body, the General Medical Council, was established by Parliament in 1858. It is a debate that has affected changes in the professions meta-regulatory framework as well as the regulatory regimes affecting many different professions, aspiring professions and occupational groups.

In this thesis, I have explored this question by examining five very different professions and their relevant regulators as they managed changes in their regulatory regimes. I explored the observable expectations arising from two private interest models, bureau-shaping and rent seeking, as they applied to the motivations of regulators and professional bodies respectively. I also explored public service motivation theory, a theory has seen much academic interest in recent years, particularly in the public administration field. I examined these theories with respect to three key non-political interest groups: regulators, professions and the public.

In this chapter, I want to draw together the empirical findings I have set out in the three previous chapters. I then want to reflect on and evaluate the models explored in this research. I then want to set out some important caveats to my findings and conclusions.

8.2 Empirical findings

In the opening chapter of this thesis, I suggested that professions regulation is not a one-size-fits-all area of public policy. The narratives I provide in chapter 4 of the five case study professions and their experiences of regulation more than amply illustrate this; while there are trends and commonalities in how professions develop and

mature and how public policy around their regulation is developed, any aggregate analysis will fail to identify, explore and explain the nuanced, time-and-place specifics of policy in this field.

It is also clear that the interest group landscape is complex and ever changing. While I have explored the motivations of regulators and the professions, there are a myriad of other actors that are important, including politicians, government civil servants, employers (particularly large employers such as the NHS), HEIs and other education and training providers and organisations that represent consumer or special interests. I feel that my analysis has only touched on this complexity. This is important, as my empirical work makes clear that professions regulation policy is a dynamic, temporally-bound process, with a multitude of different actors, with a variety of goals.

My findings suggest that these actors compete. At times, one group may be more successful in furthering their interests; at other times, they are less successful. Architects and pharmacists campaigned for, and achieved statutory regulation. Both experienced a change in that regulator in the past twenty years; in terms of architects, my research suggests that some in the profession value parts of the regulatory regime, and also suggests conflict, duplication and cooperation between the regulator and the main professional body. For pharmacists, a change in regulatory regime seems to be relatively unimportant compared to some of the issues affecting the profession, particularly community pharmacists.

For hearing aid dispensers, a cosy, insular and potentially captured relationship with its regulator was disrupted by changes in regulator staff and government proposals to transfer some of the regulator's functions to a successor body. Initially, the main professional body seem ambivalent about these proposals, large dispensing companies more hostile. But eventually this change was supported by all key stakeholders.

For me, psychotherapists and teachers provide a fascinating narrative of real-world policy making that does not quite fit our simplified models. Conflict and competition within psychotherapy, with competing views as to whether and, if so, by whom this

profession should be regulated, and an anti-regulation campaign was eventually followed by government dropping its proposals. Teachers, also represented by a myriad of competing associations, saw statutory regulation introduced, not quite what they expected, and then repealed, without any substantive anti-termination coalition in place.

Overall, my research suggests, on balance, private interest theories provide a more convincing explanation of the motivations of regulators and professional bodies as they engaged in these regulation policy developments. But there were differences, over time and between regulators and profession bodies, as to whether private or public interest motivations were more dominant or evident. There was evidence that public interests also motivated these actors.

Although I conclude that private interest motivations are a more convincing explanation of the actions of key actors, I am not convinced that rent seeking provides a useful model from which to examine the behaviour of professional bodies. I will develop this further in section 8.3 below, but difficulties in defining and measuring rent, the implausibility and lack of any substantive evidence of widespread capture in relation to the five professions investigated in this research lead me to this conclusion.

In the next section, drawing on my discussion of human agency set out in section 2.4, I make an important criticism that both public and private interest theories fail to take into account that we as human beings can have multiple, conflicting goals. I have framed this research as public versus private interests and have concluded that private interest theories are more convincing given the evidence and analysis I present in chapters 5, 6 and 7. But to some extent, the regulators and professional bodies covered by this research were motivated by both public and private interests.

I am also aware that I have only compared public and private interest explanations, and have focused on three specific models to undertake this comparison. At times, I found no evidence to support the expectations of either public or private interest theories, and I recognise that other motivating factors might have been at play.

8.3 Evaluating the theories

8.3.1 Private interest models

Both private interest models share three core assumptions, each of which I have challenged and criticised so far in this thesis. These core assumptions; *as-if* modelling, full rationality and the near omnipotence of the model's key actors, are useful in terms of producing simple, parsimonious models capable of predicting behaviour but are less helpful in exploring, explaining and understanding the real-world behaviour of regulators and professional bodies.

Patrick Dunleavy's bureau-shaping model makes a significant contribution to our understanding of how civil servants affect the policy process. In particular, Dunleavy provides a powerful insight that the behaviour of these actors is both individual and collection action and is constrained by the institutional dynamics of the agencies in which they work. The analysis presented in chapter 5 presents some support for his predictions in relation to the size and shape of regulatory agency budgets. The evidence suggests that the model is good at explaining the motivations of regulators in the four agencies I investigated. However, the model is difficult to test, needs further refinement to be a formal model, and does not take into account the dynamic relationship between regulators and regulatees, or the many other interest groups involved in professions regulation policy.

The rent seeking model is less convincing. While the analysis I present in chapter 6 suggests that professional bodies were motivated to further their own interests when they engaged in the regulation policy process, the specific predictions and general expectations of the rent seeking model present a number of issues in terms of the plausibility of some of its detailed assumptions, defining and measuring rent seeking, defining and measure rents, its failure to address the individual versus collective action aspect of rent seeking behaviour and its failure to take account of the many other interest groups involved in professions regulation.

In particular, rent enjoyment requires either very good luck or constant maintenance on behalf of professional bodies, which implies the need for regulatory capture. The

mechanism by which such capture is typically assumed to take place in economic or social regulators is future job prospects (incentivising regulators to further the interests of the regulated with promises of future, better paid jobs) and colonisation, either by regulatees working for regulators or regulatees dominating regulatory boards). The high costs of professional training mean that future job prospects and job colonisation are implausible, and certainly there is no evidence of these activities in the regulators examined in this research. Board colonisation has been a factor in the past, but government reforms in the last fifteen or twenty years has reduced this significantly. While my research has identified possible capture in relation to the RPS, HAC (at least, before 2004-5) and the GTCE, the extent and effect of this capture is debateable and exogenous factors reduced or ended the capture (interesting, as expected in sociological models of professions regulation lifecycles, but not anticipated in public policy models).

I would also argue that my analysis suggests that non-economic rents, particularly the 'badge of being a profession' that is seen to come from statutory regulation was a powerful incentive in the motivations of professional bodies. A consistent theme from the interviews I conducted was that statutory regulation was an important part of professional identity and status. Of particular importance was that was professional status *relative to other groups*. Neither sociological nor public policy models seem to account for the relative competition between professions, and the effect that public policy with respect to one group can have on other groups.

8.3.2 Public service motivation theory

The public interest is, of course, the dominant language of professions regulation public policy. And judged by the number of empirical articles published in the last five years, PSM is the current model of choice for explaining the behaviour of civil servants. There have been some interesting articles published and some evidence to suggest that, when asked, civil servants do indeed state that they are motivated by the public interest. The difficulty is, PSM as a theory is underdeveloped and some of its core assumptions are fundamentally flawed. PSM scholars disagree on how they define public service motivation, whether it is specific to public sector workers or a

more general motivation, whether it is an innate preference that leads some to work in public spirited roles or is it developed through socialisation in public organisations? Can individuals be motivated by the public interest and have other, even conflicting, motivations?

Over and above these conceptual problems, for me there are three fundamental flaws in PSM theory. First, as I established in section 2.8.3, underlying PSM is the idea that some people are more altruistic than others, and this altruism leads them to seek out opportunities to further the common good. But this is 'warm glow' or egotistical altruism; it is not selflessness. Individuals experience a 'warm-glow', some personal reward which is in itself the motivation for servicing the public good. When an actor receives some utility from giving or providing to others, and *this utility is independent from the benefit to the recipient*, then surely the actor is being self-interested and rational.

That this utility is independent from the benefit to the recipient is amply demonstrated by the lack of any substantive consideration of the public in public service motivation. The model ignores important questions of how civil servants define the public interest, how civil servants measure whether they are furthering the public interest, what do civil servants do if their actions do not further the public interest, and how do civil servants received feedback on their behaviours and actions from the public they are allegedly serving? With the exception of a single paper, presented at a conference in 2007, by David Houston and colleagues, PSM completely fails to address any of these substantive questions. Indeed, my research has found no evidence to support Houston et al's hypothesis, namely that the public simply trust that civil servants are working to further the public interest.

PSM also has no answers to give on decision-making – how do public service motivated civil servants and professionals make decisions about how to further the public interest. In particular, PSM has no answers on collective action – how do civil servants and professionals make collective decisions about how to further the public interest? What happens when they have different conceptions of what might further the public interest? How do they resolve these conflicts?

Because of these significant gaps, and because I found little evidence in line with the expectations of this model, I argue that PSM does not provide a convincing account of the motivations of the regulators and professional bodies covered by this research. Further, as I establish in section 2.8.3, the self-interested nature of further one's political and social identity through being seen to further the public interest suggests to me that this is a form of expressive utility and, as such, is entirely consistent with a rational choice view of human agency.

8.4 Caveats

I want to conclude by putting some caveats around my findings and conclusions. I have already raised important caveats with respect to the methods underlying the three empirical chapters in this research. But there are some important, more general caveats I want to raise here.

There are over eighty professions regulated in the UK, and, despite the stated intentions of the Coalition government, this number continues to rise. I have examined five of these professions in this thesis. I cannot determine whether these are representative of the whole field or outliers; indeed, given the huge variation between my five professions and the regulatory regimes covering them, I would question whether there is such a thing as a typical professions regulatory regime.

My research has drawn on content analysis of a large number of published reports, documents, policy proposals and other published material. By its nature, such documentation is the outcome of collective action and represents the considered view of the relevant organisation. It typically does not represent the views of individual actors. My research also draws on elite interviews with $n=46$ key actors in the regulation of my five professions. Most of these were individuals engaged at the highest levels of their professions, the regulators or wider public policy. As such, I only have a partial picture of the motivations of civil servants and regulators, and it is likely the picture these actors wanted to be seen.

Finally, I have examined only the motivations of two key actors, regulators and professional bodies. I have not explored how the actions of other key interest groups might have incentivised or constrained the behaviour of regulators and professional bodies. In particular, I have not explored the behaviours of politicians or civil servants working in central government departments. Again, as a result, my research provides a partial picture of the complexity of professions regulation public policy.

9 Appendices

9.1 Interviewees

A list of interviewees is available on request from the author.

9.2 Semi-structured interview instrument

How would you describe the role your organisation plays and your role within the organisation?

Describe HOW you think the market is configured and whether this is an accurate assumption. Thinking about the market within which your profession operates, how does this market work? What difficulties or problems are there in the operation of this market? What impact does this have on regulation policy?

One of the following OR do not ask as irrelevant:

The state is a major employer of your profession. Does this role of the state as employer effect the regulation policy process and, if so, how?

The state is a major purchaser of services from your profession. Does this role of the state as purchaser effect the regulation policy process and, if so, how?

Why regulate? What outcomes expected? Negative and positive? Different outcomes for different groups? For policy makers, bureau, consumers, professionals, others? Win-win or net zero gain? Costs of outcomes? (could you provide budget data). How outcomes achieved?

What happens without regulation? OR what happens when regulation is introduced?

For professional bodies

Why do individual professionals join your body? What benefits do they derive from membership?

Any cross-over between your profession and other professions? Are those professions regulated?

How well does the regulator understand how your profession works? What factors influence this level of understanding? Does your professional representation on the regulator board have an impact?

What impact does/would regulation have on the development of your profession?

For regulators and policy makers

What impact does professional representation on your board have on the regulation policy process? What impact do consumer representatives have on regulation policy?

What factors affect your understanding of the profession? Is there an interchange of staff between your body and the profession?

Generally, regulators have seen a significant increase in investigation and disciplinary work over the past ten years. How has this increase affected the regulation policy process? And the relationship between you and the professional body?

Thinking about the most recent changes to regulation in this profession, describe what change was made and how that change came about? Which interest group was most involved in pushing forward those changes? Describe how the policy process worked from beginning to end. What was your response to this change (proposals, development, and implementation). How was the proposal received by different groups? Explain?

Any issues we haven't covered that are relevant?

9.3 Survey questions

1. Your age (under 18, 18-24, 25-34, 35-44, 45-54, 55+, rather not say)
2. Your current sex (male, female, rather not say)

3. Your ethnicity (White – British, White – other, Mixed - White and Black Caribbean, Mixed - White and Black African, Mixed - White and Asian' Mixed - White and other, Black or Black British – Caribbean, Black or Black British – African, Black or Black British – Other, Asian or Asian British – Indian, Asian or Asian British – Pakistani, Asian or Asian British – Bangladeshi, Asian or Asian British – other, Other, Rather not say)
4. Your annual household income (Less than £25,000, £25,000 to £34,999, £35,000 to £49,999, £50,000 to £74,999, £75,000 to £99,999, £100,000 to £124,999, £125,000 to £149,999, £150,000 or more, Rather not say)
5. In the last five years, have you been registered with a UK regulator of the professions (that is, have you practised as a professional where using a professional title requires registration with a regulatory body) (yes, no)
6. Are you currently working towards registration with a UK professions regulator? (for example, are you enrolled on a course that would lead to you practising as professional, where that profession is covered by some form of statutory regulation)(No, Yes, currently undertaking training in a regulated profession, Undertaking professional education, but unsure whether profession is regulated)
7. In the last five years, have you used the services of, or had professional contact with, one of the following professions? (tick all that apply)(Not used the services of any of these five professions, Architects, Hearing Aid Dispensers, Pharmacists, Psychotherapists, Teachers (excluding being taught as a pupil at school))
8. When you last used the services of or came into professional contact with these UK-based professions (Architects, Hearing Aid Dispensers, Pharmacists, Psychotherapists, Teachers, in what capacity did this contact take place? (No contact, Service user or client, Family/friend/carer of service user or client, Affected by actions of a professional in my local area, Other)
9. Before using the services of one of these professions, would you check to see if they are regulated? (Always, Sometimes, No, Don't know)
10. Which of the following statements best describes your assumptions about the current regulatory status of these five UK-based professions? (Regulated by government or government body, Self-regulated by single professional body, Self-regulated by a number of professional bodies, Not regulated, Don't know)

11. In general, do you think professions should be regulated by government? (tick one that most represents your view)(Yes, always, Yes, where there is no form of professional self-regulation, Yes, where the risk of harm without regulation is high (injury, death or loss), No, Don't know)
12. Thinking about government regulation of these five professions (architects, hearing aid dispensers, pharmacists, psychotherapists & counsellors, teachers), what benefits do you think arise from their regulation? (please tick all that apply)(No benefits, I have confidence that a professional meets minimum standards, The public are protected from incompetent individual professionals, The public are protected from unscrupulous individual professionals, Regulation maintains standards of training and education for professionals, Regulation raises the standards of training and education for professionals, There is a clear distinction between regulated and unregulated professionals, Regulators take action when individual professionals fall below minimum standards of conduct and competence, Regulation reduces the costs and uncertainty when someone decides to use the services of a profession, Being a profession means being regulated by government, Regulation promotes the professions, Regulation leads to higher salaries/earnings for regulated professions, Other (please specify))
13. Of these benefits, which do you think is the most significant? (please tick one only)(list as for question 12 above)
14. Thinking about government regulation of these five professions, what benefits do you think DO NOT arise from their regulation? (please tick all that apply)(list as for question 12 above)
15. Thinking about government regulation of these five professions, what are the costs of their regulation? (tick all that apply)(No costs, Loss of some competent individuals to the professions, Reduction in resources for public services, Paperwork burden, Duplication between regulators, Loss of professional creativity, Higher charges to clients or higher taxes, Other (please specify))
16. Of these costs, which is the most significant? (tick one only)(list as for question 16 above)
17. Which of the following groups do you think benefit from government regulation of the professions? (please rank, 1 being benefits the most)(Clients/service

users, Organisations involved in education and training of professions, Individual professionals, Regulators, Family/friends/carers of clients/service users, Local authorities or healthcare providers, Unions or professional bodies, The relevant government department (civil servants), Government (Ministers), Don't know, Other)

18. Which of the following groups do you think bear the costs of government regulation of the professions? (please rank, 1 being bears the highest cost)(list as for question 17 above)
19. Overall, which of the following statements best expresses your views of the costs and benefits of government regulation of the professions? (The benefits outweigh the costs, The benefits and the costs are about the same, The costs outweigh the benefits, Don't know)
20. Thinking about those who work for government regulators, what do you think motivates them in their work? (please rank, 1 being motivates the most)(Protecting clients/service users, Working for the public interest, Type of work they undertake, Salary, Future job prospects, Promoting the interests of the profession, Just a job, None of the above)
21. Thinking about those who work for professional bodies and trades unions, what do you think motivates them in their work? (please rank, 1 being motivates the most)(list as for question 20 above)
22. Using the slider below, where the end means government should cut taxes a lot and spend much less on health and social services and the end marked 100 means that government should raise taxes a lot and spend much more on health and social services, where would you place yourself on this scale? (The slider may not work on some devices. If it does not work, please use the comment section, giving a number between 0 and 100 for your answer)
23. Some people think that reducing crime is more important than protecting the rights of people accused of committing crimes. Other people think that protecting the rights of accused people is more important than reducing crime. Using the slider below, where would you place your own view (0 being Reducing Crime is more important, 100 being Protecting the rights of the accused is more important). (The slider may not work on some devices. If it does not work, please enter a number between 0 and 100 in the comment box provided).

24. Some people think of themselves as usually being a supporter of one political party rather than another. Do you usually think of yourself as being a supporter of one particular party?(yes, no, rather not say)
25. If you answered YES above, which party do you normally support? (Labour, Conservatives, Liberal Democrats, United Kingdom Independence Party, Scottish National Party, Other (please specify))
26. On balance, would you say that most people can be trusted or cannot be trusted? Using the slider below, where would you place your view (0 being that people can never be trusted and 100 being people can always be trusted). (The slider may not work on some devices. If it does not work, please enter your response as a number between 0 and 100 in the comment section below.)
27. Do you think that most people with whom you come into contact would try to take advantage of you if they got the chance or would they be fair? Use the slider below, please indicate your view (0 being that people try to take advantage and 100 being people always try to be fair). (The slider may not work on all devices. If it does not work, please enter your answer in the comment section below, as a number between 0 and 100.)
28. If you have any further comments or observations to make on the government regulation of professions, please do so here.

9.4 Collinearity analysis

		Age	Income	Gender	Currently regulated or not	In training for profession or not	Do you generally support a political party	White or not	Trust	Tax and spend or reduce and cut	Crime or rights
Age	Pearson Correlation	1	.223**	-.174**	.147*	-.477**	.260**	.022	.304**	.081	-.076
	Sig. (1-tailed)		.001	.009	.022	.000	.000	.380	.000	.146	.160
	N	187	187	187	187	176	171	187	171	171	171
Income	Pearson Correlation	.223**	1	-.066	.189**	-.202**	.123	-.088	.187**	-.089	-.008
	Sig. (1-tailed)	.001		.185	.005	.004	.054	.115	.007	.123	.456
	N	187	187	187	187	176	171	187	171	171	171
Gender	Pearson Correlation	-.174**	-.066	1	.056	.167*	-.154*	.059	-.004	.125	-.010
	Sig. (1-tailed)	.009	.185		.223	.013	.022	.213	.481	.051	.450
	N	187	187	187	187	176	171	187	171	171	171
Currently regulated or not	Pearson Correlation	.147*	.189**	.056	1	-.152*	.003	.031	.166*	.038	-.009
	Sig. (1-tailed)	.022	.005	.223		.022	.486	.337	.015	.313	.453
	N	187	187	187	187	176	171	187	171	171	171
In training for profession or not	Pearson Correlation	-.477**	-.202**	.167*	-.152*	1	-.147*	-.004	-.206**	-.047	.023
	Sig. (1-tailed)	.000	.004	.013	.022		.031	.481	.004	.274	.387
	N	176	176	176	176	176	162	176	162	162	162
Do you generally support a political party	Pearson Correlation	.260**	.123	-.154*	.003	-.147*	1	.113	.153*	.038	-.018
	Sig. (1-tailed)	.000	.054	.022	.486	.031		.070	.023	.310	.405
	N	171	171	171	171	162	171	171	171	171	171
Race	Pearson Correlation	.022	-.088	.059	.031	-.004	.113	1	.162*	-.002	.209**
	Sig. (1-tailed)	.380	.115	.213	.337	.481	.070		.017	.489	.003
	N	187	187	187	187	176	171	187	171	171	171
Trust	Pearson Correlation	.304**	.187**	-.004	.166*	-.206**	.153*	.162*	1	.288**	.206**
	Sig. (1-tailed)	.000	.007	.481	.015	.004	.023	.017		.000	.003
	N	171	171	171	171	162	171	171	171	171	171
Tax or spend	Pearson Correlation	.081	-.089	.125	.038	-.047	.038	-.002	.288**	1	.227**
	Sig. (1-tailed)	.146	.123	.051	.313	.274	.310	.489	.000		.001
	N	171	171	171	171	162	171	171	171	171	171
Crime or rights	Pearson Correlation	-.076	-.008	-.010	-.009	.023	-.018	.209**	.206**	.227**	1
	Sig. (1-tailed)	.160	.456	.450	.453	.387	.405	.003	.003	.001	
	N	171	171	171	171	162	171	171	171	171	171

** Correlation is significant at the 0.01 level (1-tailed).

* Correlation is significant at the 0.05 level (1-tailed).

Table 40: Collinearity analysis

9.5 Coding framework

9.5.1 First stage coding framework

Name	Description
Author	The organisation or individual author of a report
Beneficiaries	The individuals or groups who are seen to benefit from regulation or the actions of regulators
Benefits	The benefits that might arise from the regulation of professions. These may be explicitly stated as benefits, as objectives for regulation or may be more implicit
Budget change	A change to the structure of the budget of an organisation
Collaboration	The organisation or group has worked with others outside its organisation or group. Collaboration may be on a specific project or may be ongoing.
Consultation	Organisation has led consultation.
Cost bearers	Groups or organisations identified as bearing the costs of regulation, or for whom changes to regulation will have a negative impact.
Costs	
External cost driver	Issue that would drive additional costs within an organisation or to a group that exists externally to that organisation or group.
External market driver	Issues that will drive change in an organisation or group that arise from changes in the structure or the operation of the market (labour market or market for goods and services). Would include changes to the market arising from government reforms (example, labour market implications from the introduction of academy schools)
External policy driver	Issues that drive group or organisation change arising from policy external to the organisation or group (for example, changes arising for regulator from publication of new government proposals).
Implemented regulation	New regulation, standard or rule has been implemented by the organisation. Must arise from statutory duties.
Interest group	Relates to an interest group (eg professional body, consumer advocacy group)
Internal cost driver	Issue internal to organisation that is driving up costs. May be as a result of new functions
Internal policy driver	Issue requires policy response by organisation that arises from within that organisation
New function - other	New function within an organisation (team, unit, task) that is not related to policy or does not involve the employment of new staff.
New function - policy	New function within an organisation that relates to policy (new research or policy team or function)

Name	Description
New function - staff	New function that requires the employment of additional staff, or newly appointed staff to a new role (that is, excludes recruitment of new staff to fill vacancy in long existing role).
Organisational development	Change in the structure of the organisation or its governance arrangements.
Outsourced contract	Reference to a contract which is currently delivered by an external organisation under contract.
Outsourcing	Organisation is outsourcing function or retendering an existing outsourced function (whether existing contractor is appointed or new contractor is appointed).
Policy	Relates to some area of public policy (excludes corporate strategy).
PR	Organisation undertook public relations work, marketing or lobbying work.
Profession	Reference made to a profession or issues that relate to a profession.
Professionalisation	Reference to the development of an occupational group into a recognised profession.
Professionalism	The values and identify held by individual professionals.
Proposed regulation	New or revised regulation is being considered by organisation or government or has been proposed. May
Quotes	
Required regulation	Identified need for new regulation or changes to existing regulatory framework.
Responded to consultation	Organisation or individual has responded to a consultation.
Reviewed regulation	The organisation or group has proposed to undertake or has undertaken a review of regulation, whether in general or specific rules, standards or legal requirements. Excludes changes to rules governing corporate
Sponsor department	Name of the government department that 'sponsors' a government agency or regulator. NB For those regulators that are accountable to the Privy Council, the sponsoring department will be one of the departments of State.
Strategy	Areas of corporate strategy. Plans to introduce or implement or work arising from implementation of strategy or plan that affects how the organisation is structured or managed.
Was lobbied	Organisation of individual has been lobbied about a specific issue.

Table 41: First stage coding framework

9.5.2 Second stage coding framework

Node	Comment
<i>Budget change</i>	Led to, or resulted from, change in budget size or shape.
<i>Consulted</i>	Decision involved more than one group.
<i>Externally driven</i>	Explained or plausibly explained by factors external to the regulatory agency or profession.
<i>Focused on policy-making</i>	Led to change in focus on policy work. Policy work as means (intrinsic) or ends (extrinsic).
<i>Internally driven</i>	Explained or plausibly explained by factors internal to the regulatory agency or profession. May proceed from exogenous factor.
<i>Negotiated</i>	Involved lobbying, making the case, PR, discussion, negotiation.
<i>Policy change</i>	Led to initiation, development, change, implementation or termination of policy.
<i>Public interested</i>	Justified or explained with reference to the public interest. Demonstrates how public interest would be furthered. Furthers the public interest.
<i>Self-interested</i>	Justified or explained with reference to interests of profession or regulator. Furthers interests of profession or regulator.

Table 42: Second stage coding framework

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